SUPREME COURT OF THE UNITED [illegible]

No. 243.

SAMUEL A. PEUGH, APPELLANT,

vs.

HENRY S. DAVIS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Original bill.—Filed July* 13, 1869.

In the supreme court of the District of Columbia, June 28, 1869.

SAMUEL A. PEUGH *vs.* HENRY S. DAVIS. } 1713. Equity.

To the supreme court of the District of Columbia, holding an equity court for said district:

The plaintiff complains as follows:

1st. He is a citizen of Washington, District of Columbia, and on or about the month of March, 1857, applied to defendant, Henry S. Davis, who is also a citizen of said city and District, for a loan of $2,000, which loan the said defendant agreed to make to the plaintiff for the period of sixty days, upon the conditions, first, that the plaintiff should pay to him interest at the rate of about 3¾ per cent. per month; and
2 secondly, that the plaintiff should, as security for said loan, give to the defendant a deed absolute in form for certain squares of ground owned by the plaintiff in said city and District, to wit: squares numbered 910 and 911. And to these said conditions the plaintiff was compelled by the pressure then upon him to submit; and accordingly, for said loan of $2,000 for 60 days, he paid the defendant interest at the rate of 3¾ per cent. per month, and, as security for repayment of said loan, he made, on the 4th day of March, 1857, a conveyance of said property absolute in form, a copy of which is herewith filed, marked Exhibit A, with the agreement, understanding, and contract between said parties that upon repayment of said loan within the said 60 days, the
3 said conveyance should be null and void; that it should in meanwhile not be recorded, and that upon repayment as aforesaid of said loan, the said deed should be returned by the defendant to the plaintiff. And upon the expiration of said period of 60 days, the plaintiff did repay to the defendant said loan, principal and interest, and the defendant pocketing for the use of his money interest at the rate of 45 p'r cent. per annum, returned to the plaintiff said deed.

2d. In or about the month of July, 1857, the plaintiff borrowed from the defendant the sum of $1,500 under conditions exacted by the defendant (who well knew the necessity of the plaintiff) as hard as those of the former loan. For the said loan of $1,500 for the period of 60 days, the defendant required and received from the plaintiff in-
4 terest at the rate of 3¾ per cent. per month; and as security for repayment of said loan, the plaintiff deposited with the defendant the deed hereinbefore mentioned, with the explicit and complete understanding, agreement, and contract between the plaintiff and defendant, that the said deed was so deposited only as security for the repayment of said loan, that it should not meanwhile be recorded, and that upon repayment of said loan it should be delivered up to plaintiff, and that except for the purpose and in the manner herein stated, the whole operation, force, and effect of said deed should be defeated, and that upon repayment as aforesaid, it should be wholly null and void.

At the expiration of said period of 60 days, for which this said
5 loan of $1,500 was made, the plaintiff was unable to repay it, and applied to defendant for an extension of time to another 60 days, in consideration of the usury which defendant had already extorted, and of the valuable security which he held, which said extension of time de-

fendant agreed to give, and also to make an additional loan of $500, upon the payment of an additional bonus at the same rate as upon the other loan, to wit: at 3½ p'r cent. per month, and upon the execution of a further instrument of similar tenor and effect to the aforesaid deed, and he, the defendant, represented to the plaintiff that this additional instrument was rendered necessary by the further advance of money aforesaid, and that the relations of said parties would continue unchanged; that the plaintiff was merely borrower, and the defend-
6 ant lender; that the said conveyance, both by the original deed and the said second instrument, was, and should continue, only security for the repayment of said loans (to wit: $1,500 and $500), principal and interest, and, except as such security, should have none other operation and effect; and before the plaintiff would consent to execute said paper, he called on the defendant's conveyancer, William H. Ward, esq., who, as the plaintiff knew, had been in consultation with the defendant on this point, and asked whether fraud on the part of the defendant could give the said conveyance any other operation than as aforesaid, and whether the plaintiff would be safe in executing said paper, under all the circumstances, and whether defendant could, or would,
7 in any way, take advantage of it to the injury of the plaintiff. Whereupon the said conveyance' of the defenant replied that he understood the transaction as a loan, with the said instrument as security for the repayment thereof, and he thought there was no danger whatever in executing the paper, and that he thought the defendant would take no advantage of it, and thereupon the second instrument was executed by the plaintiff and delivered to the defendant.

Subsequently the defendant dunned plaintiff for repayment of said loan, but being then embarrassed by liabilities incurred as security, the plaintiff was at the time of such application, unable to pay him. The defendant afterward called upon the plaintiff to pay him further
8 and frequent and regular instalments of interest upon said loan at the rate of 2½ per cent. per month. Being unable to comply with the extortionate demand, the plaintiff endeavored to sell said property, but was unable to do so except at a sacrifice greater than he was willing to make. The plaintiff never supposed that the defendant would ever enter upon possession temporarily of said property, and not until he, the plaintiff, made a lease of a portion thereof to George Simms (colored), who erected a frame house *house* thereon at a cost of several hundred dollars, in 1865, did ascertain such entry to have been made. The plaintiff is advised that at the most the defendant's entry and possession could only be as mortgage, and until repayment of said loan.

9 5th. The said property is now worth about $30,000, and the defendant is in enjoyment of all its rents and profits. And though the plaintiff has always expected to repay said loan, and is ready and willing to do so forthwith, and has tendered, and hereby tenders repayment of the same, and for said purpose has required of the defendant a statement of accounts and especially of the rents and profits received, or which might with reasonable diligence have been received from said property by the defendant; yet the defendant refuses to comply with said requests of plaintiff to redeem said property and surrender up possession of the said deeds and property, and the plaintiff fears that the defendant means to defraud him of all his rights in the premises.

10 *Prayers.*

The plaintiff therefore prays:

1st. That an account may be taken of what is due the defendant for principal and interest on the said loans, and also for the rents and profits which have been, or without neglect or default on his part might have been, received by the defendant.

2d. That the plaintiff be permitted to redeem the said property, being ready and willing, and hereby offering to pay what shall, upon the settlement of account, appear to remain due in respect to the loans, for which said conveyance of the property was made as aforesaid.

3d. That the said conveyance, and all deeds and instruments executed in pursuance thereof as aforesaid be decreed to be null and void.

11 4th. That the defendant be decreed to convey the said property and deliver up possession thereof to the plaintiff, free from all encumbrance, of whatsoever character, made by the defendant or any person claiming under him; and to deliver over to plaintiff all deeds and writings in his custody or power relating to the said premises.

5th. That the defendant be enjoined from aliening in any manner whatsoever the said premises; from creating any lien or incumbrance whatsoever on the same; and that by decree of this court a receiver be appointed, and receive and hold, subject to the order of this court, the rents and profits of the same.

6th. That such other and further relief be afforded him as equity and the nature of the case may require.

SAM'L A. PEUGH.

R. T. MERRICK,
E. L. STANTON,
Solicitors for Plaintiff.

12 I do solemnly swear that I have read the foregoing bill by me subscribed, and know the contents therein , and that the facts therein stated, upon my personal knowledge, are true, and the facts therein stated, upon information and belief, I believe to be true.

S. A. PEUGH.

Sworn to and subscribed before me this thirteenth day of July, 1860.

R. J. MEIGS, *Clerk.*

13 EXHIBIT A.

Deed.—Recorded 7th Sept., 1857.

SAM'L A. PEUGH & WIFE
to
HENRY S. DAVIS.

This indenture, made the fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, between Samuel A. Peugh and Caroline E., his wife, of the city of Washington, in the District of Columbia, of the first part, and Henry S. Davis, of the said city of Washington, of the second part, witnesseth:

That the said Samuel A. Peugh and his said wife, for and in consideration of the sum of two thousand dollars, in lawful money of the United States, to them in hand paid by the said Henry S. Davis, at and before the sealing and delivery of these presents, the receipt whereof is

hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said Henry S. Davis, his heirs and assigns, forever, all those certain pieces or parcels of ground situate and lying in the said city of Washington, and known and described as being all of squares numbered nine hundred and ten (910) and nine hundred and eleven (911), as the same are laid down on the public plan of said city, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand, either at law or in equity, or otherwise, however, of the said parties of the first part, of, in, to, or out of the said pieces or parcels of ground and premises; to have and to hold the said pieces or parcels of ground and premises and appurtenances unto the said Henry S. Davis, his heirs and assigns, to his and their sole use, benefit, and behoof forever. And the said Samuel A. Peugh, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said Henry S. Davis, his heirs and assigns, that the said Samuel A. Peugh and his heirs shall and will warrant and forever *and forever* defend the said pieces or parcels of ground and premises and appurtenances unto the said Henry S. Davis, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through the said Samuel A. Peugh and his heirs, or any of them. And further, that the said Samuel A. Peugh and his heirs shall and will, at any and at all times hereafter, upon the request and at the cost of the said Henry S. Davis, his heirs or assigns, make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said pieces or parcels of ground and premises and appurtenances unto the said Henry S. Davis, his heirs or assigns, as the said Henry S. Davis, his heirs or assigns, or his or their counsel learned in the law, shall advise *advise* or require.

In testimony whereof the said Samuel A. Peugh and his said wife have hereunto set their hands and seals on the day and year first hereinbefore written.

SAM'L A. PEUGH. [SEAL.]
CAROLINE S. PEUGH. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN S. HOLLINGSHEAD.
L. K. OFFUTT.

DISTRICT OF COLUMBIA,
County of Washington, ss:

We, John S. Hollingshead and L. K. Offutt, justices of the peace in and for the county of Washington aforesaid, in the said District, do hereby certify that Samuel A. Peugh, a party to a certain deed bearing date on the fourth day of March, A. D. 1857, and hereunto annexed, personally appeared before us in our county aforesaid, the said Samuel A. Peugh being personally well known to us to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hand and seals this fifth day of March, A. D. 1857.

JOHN S. HOLLINGSHEAD, *J. P.* [SEAL.]
L. K. OFFUTT, *J. P.* [SEAL.]

18 DISTRICT OF COLUMBIA,
County of Washington, ss:

We, John S. Hollingshead and , justices of [illegible] and for the county of Washington aforesaid, in the said [illegible] hereby certify that Caroline S. Peugh, a party to a certain [illegible] date on the fourth day of March, A. D. 1857, and [illegible] personally appeared before us in our county aforesaid, the said [illegible] S. Peugh being personally well known to us to be [illegible] cuted the said deed, and being by us examined separately [illegible] her husband, and having the deed aforesaid fully explained [illegible] said Caroline S. Peugh acknowledged the same to be [illegible] and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this fifth day of March, A. D. 1857.

JOHN S. HOLLINGSHEAD, J. P. [SEAL.]
L. K. OFFUTT, J. P. [SEAL.]

Subpœna.

19 In the supreme court of the District of Columbia, July 13, 1869.

SAMUEL A. PEUGH, COMPLAINANT,
against
HENRY S. DAVIS, DEFENDANT. } No. 1713. Eq. Doc. 9.

The President of the United States to Henry S. Davis:

You are hereby commanded to appear in this court, at its first [illegible] term occurring twenty days after service of this subpœna, [illegible] the exigency of the bill, under pain of attachment and such other [illegible] cess of contempt as the court shall award.

Witness: D. K. Cartter, chief justice.

R. J. MEIGS,
Clerk, &c.

Summoned July 13, 1869.

A. SHARP,
Marshal.

20 *Answer.—Filed Aug. 14, 1869.*

In the supreme court of the District of Columbia.

SAMUEL A. PEUGH
vs. } No. 1713. Eq.
HENRY S. DAVIS.

The answer of Henry S. Davis to the bill of complaint of Samuel A. Peugh.

This defendant, saving all benefit of exceptions to the many [illegible] uncertainties, and other imperfections in the said bill contained, [illegible] swer thereunto, or unto so much and such parts thereof as he is [illegible] it is necessary or material for him to make answer, answering, [illegible]

Some time in the month of May, 1857, this defendant [illegible] complainant the sum of fifteen hundred dollars for the [illegible]
21 sixty days, and received from the complainant as security for [illegible]

loan a deed of conveyance, whereof Exhibit A, filed with the bill, is admitted to be a true copy, which deed, it was agreed between this respondent and the complainant, should not be placed upon record until the expiration of said sixty days; the complainant having failed to pay said debt at maturity, this defendant shortly thereafter called upon him and demanded payment, but the complainant failed to make payment of said debt or any part thereof, principal or interest. This defendant renewed his application for payment from time to time, but with a like result, and repeatedly offered to accept the payment of said principal in full discharge of the debt, and thereupon to reconvey to the com-
22 plainant the property mentioned in the aforesaid deed, but the complainant refused to pay said principal, though abundantly able so to do, as this defendant is prepared to prove.

Under these circumstances this defendant placed said deed upon record on the 7th of September, 1857, about two months after the payment of said debt had matured. When said deed was delivered to this defendant as aforesaid, the squares of ground therein mentioned, being Nos. 910 and 911, were claimed by one Charles H. Wiltberger, by virtue of a sale made thereof by the city of Washington for non-payment of taxes, and conveyances in pursuance thereof, and suit had been threatened by said Wiltberger, but this defendant was, notwithstanding said outstanding claim, induced to make said advance by reason
23 of the ability of the complainant to pay, and the confidence in his integrity and sense of justice then entertained by this defendant. On or about the 16th of January, 1858, the said Charles H. Wiltberger instituted two suits in ejectment against this defendant in the late circuit court of the District of Columbia for the recovery of said squares of ground. Thereupon this defendant again demanded payment of his debt, but the complainant failed and refused to pay said debt, or any part thereof, falsely pretending want of means, but offered to sell out all his interest in said property at and for the further sum of five hundred dollars, which sum this defendant refused to pay, but again offered to take said principal in full satisfaction of said debt, which offer the
24 complainant refused, but *reserved* his said proposition to sell, and that, in the course of negotiations, this defendant having, among other objections to making said purchase, referred to the said suits then pending, the complainant thereupon offered and agreed, in consideration of the sum of $500 to be made by this defendant, to release all equity of redemption, interest, or estate in said squares to this defendant, and to indemnify and save harmless this defendant against said suits, and generally to warrant and defend the title to said squares of ground. To this proposition of the complainant this defendant assented, and on or about the 9th of February, 1857, he and the complainant met at the office of William H. Ward, esq., a member of the bar of said court,
25 and then and there carried into execution said contract according to the instructions and advice of said Ward, the complainant executing the covenant whereof a copy is herewith filed, marked "H. S. D., Exhibit No. 1," and prayed to be taken as part hereof, and this defendant thereupon paying to the complainant the agreed sum of five hundred dollars, and taking a receipt, annexed to said covenant, for $2,000, in full for the purchase of said squares, a copy of which receipt is annexed to the last-mentioned exhibit. This defendant avers that both said original covenant and receipt were drawn by said Ward, and are now in his handwriting, and were intended to carry into full effect and execution the contract aforesaid, and this defendant is informed and
26 believes that a new deed of conveyance was not drawn by said

Ward, because of the fact that the deed delivered to this defendant was then upon record and on its face conveyed the said squares absolutely to this defendant. And this defendant avers and is prepared to prove that the intention as well of the complainant as this defendant, as communicated by both to said Ward to be carried into execution, was as hereinbefore set forth, this defendant to be indemnified as aforesaid, and thereupon and on the payment of said additional sum of five hundred dollars to become the exclusive and absolu'e owner of said squares of ground.

This defendant further says that the purchase-money paid by him as aforesaid was the full value of said squares of ground under the
27 circumstances surrounding the same, and in view of the depression in value of real estate in said city, owing to the financial crisis which then prevailed throughout the country.

This defendant further says that the said claim of Wiltberger to said squares was tried at May term, 1858, and determined in favor of this defendant, and that exceptions having been taken pending the trial, a writ of error was sued out by said Wiltberger from the Supreme Court of the United States, and that owing to the failure of said Wiltberger to docket said suit, or other cause, the said writ of error, which had by the advice of the counsel of this defendant been permitted to lie, was, after the lapse of five years from the judgment below, and when too
28 late to sue out a new writ, dismissed by said court.

This defendant further says that upon his said purchase, on the 9th of February, 1858, which purchase he avers was forced upon him by the refusal of the complainant to make provision for said debt or even to pay the principal thereof, this defendant entered into possession of said square of ground, and has since held said possession and has paid from time to time the taxes levied thereon, including a large special tax for grading and paving, and has in all respects exercised the rights and discharged the duties appertaining to ownership, and that he has acted as aforesaid with the full knowledge and acquiescence of the complainant, who, until the filing of the bill in this cause, never at any time
29 asserted or pretended to this defendant to hold any resulting trust or other interest whatsoever in the said squares of ground, or either of them.

It is true that the said squares of ground, nearly valueless for one or two years after the commencement of the rebellion, as this defendant avers they were, have since largely increased in value, being now worth about $9,000 or $10,000, one-third the value falsely alleged in the bill, which increase mainly took place in or about 1864, when the impending fate of the rebellion gave promise of a prosperous future to said city. And this defendant believes and avers that said increase in value induced the complainant to attempt to repudiate his sale made as aforesaid. In support of this allegation this defendant shows, upon
30 information and belief, that early in October, 1865, the defendant falsely pretended to William J. Stone, esq., counsel for Samuel Cole, that he, the complainant, was entitled to an equity of redemption in said squares of ground; and that said equity, when established by decree, could be subjected to the payment of a judgment recovered by said Cole in 1863 against the complainant for the sum of $684.83, with interest from the 6th of May, 1855, and costs of suit, and endeavored to induce said Stone to file a bill in equity against the complainant and this defendant for the establishment of said equity; and that said Stone, having yielded to the persuasion of the complainant, and it

being necessary to revive the said judgment for the want of exe-
31 cution, a sci. fa. was issued thereon on the 10th of October, 1865;
and that the complainant thereupon, on the same day, and for the corrupt purpose of aiding said proceeding, ordered a fiat to be entered immediately by the court, which having been done, and a fieri facias issued on the next day, and returned on the 17th of October, 1865, nulla bona, on the same day said bill in equity was filed at the instance of said Stone; and that said bill was duly answered on the 8th of November following by this defendant, who alleged his said purchase; but that the complainant purposely refrained from answering said bill, and that upon the filing of the answer of this defendant, and the exhibition to said Stone of the evidences of purchase, the said bill was
32 ordered to be dismissed. And in further support of said allegation, this defendant says that in the summer of 1865, and after said increase in value of said squares, the complainant clandestinely, and without the knowledge or consent of this defendant, and well knowing that said squares of ground were in the possession of this defendant, and were held in absolute ownership, with the fraudulent purpose of aiding the pretended claim now set up by obtaining the possession thereof, rented to one George Henry Simms said squares, and induced him to build a small wooden house thereon; and that upon the discovery of said trespass by this defendant early in October, 1865, he proceeded to eject said pretended tenant and remove said house; but
33 that, having ascertained that said tenant had acted innocently, this defendant suffered him to remain on said premises, he becoming the tenant of this defendant at a nominal rent.

The foregoing machanations on the part of the complainant induce the said allegation that the increase of the value of said squares after a depression almost to the point of worthlessness, has held out a temptation too strong to be resisted by the honesty of the complainant.

This defendant further shows that said squares of ground have never been improved to any extent except by the small house built by said Simms at the time and under the circumstances above men-
34 tioned, and that save to the extent of the nominal rent yielded by the lease to said Simms the said squares have been wholly without benefit to this defendant, except in the rise in the value thereof.

And further answering said bill, this defendant denies that in the month of July, 1857, or at any time, the complainant borrowed from this defendant the sum of $1,500 for sixty days, at the alleged rate of 3¾ per cent. per month, or any usurious rate, or that this defendant required or received interest at said rate or any usurious rate, or that at the expiration of said sixty days the complainant applied to this defendant for an extension of time for another sixty days in consideration of the alleged usury and security, or for any consideration, or that this
35 defendant agreed to give said extension, or to make an additional loan of $500 upon the payment of an additional bond at the same rate of 3¾ per cent. per month, or at any rate, or that this defendant agreed to make an additional loan of $500 or any sum at the alleged rate, or at any rate whatsoever upon the execution of a further instrument of writing of similar tenor and effect, to the aforesaid deed, or otherwise, or that this defendant represents that alleged or any instrument of writing was rendered necessary by the alleged or any further advance of money, or that the relations of this defendant and the complainant would continue unchanged to those of lender and borrower, or that said deed and further instrument were and should continue
36 only security for the repayment of the alleged loans of $1,500

and $500, or any loans, or except as such security should have none other operation and effect, or that at any time any further instrument or instruments of writing were mentioned or directly or indirectly referred to, save only for the purpose of carrying fully into execution the contract of sale hereinbefore fully set forth, or that the said covenant and receipt, copies whereof are filed herewith, were, or either of them was intended, by either this defendant or the complainant, to have any other operation or effect whatsoever, save only to secure and protect this defendant as the absolute purchaser and owner of said squares of ground, rid and discharge forever of and from all
37 estate, interest, or demand whatsoever, on the part of complainant.

Further answering, this defendant says that he denies that he ever had any consultation with said Ward in reference to said additional loan of $500, or any additional loan whatever, or in reference to any further instrument or instruments of writing, save only to carry into effect said contract of sale as above stated. This defendant does not know what passed between the complainant and said Ward, or whether the alleged inquiries, or any of them, were made of the latter, or what answer or opinions were by said Ward expressed in reply to said inquiries, but this defendant is informed and believes that the allegations in
38 the bill in this regard are but a tissue of falsehoods, and he calls for proof of the same if pertinent to the complainant's case, and he denies that said responses or opinions, or any of them, were made or given with the knowledge or approval or by the consent or authority of this defendant.

This defendant further denies that subsequently to the execution of said covenant and payment of $500 and receipt as hereinbefore set forth he "dunned" the complainant, as alleged, or ever demanded payment of either said $1,500 or $500 or any part thereof or any interest thereon, or that he otherwise in any respect whatsoever treated or regarded the transaction carried into effect by said covenant, payment, and receipt, in any respect as other than an absolute purchase as aforesaid, or
39 that the complainant ever called upon this defendant to pay the alleged interest, or any interest whatever, or that this defendant ever received the alleged interest, or any interest whatsoever, or that the complainant ever, to the knowledge of this defendant, or so far as he is informed, treated said transaction or professed to regard the same as other in any respect than an absolute purchase on the part of this defendant, save only in the fraudulent and clandestine machinations as above mentioned, until shortly before the filing of the bill.

And this defendant denies all and every claim of right of the complainant set forth in the said bill in and to the said squares of ground or any interest of the complainant at law or in equity therein,
40 without this, that there is any other matter or thing in the said bill contained material or necessary for this defendant to make answer and not herein sufficiently answered, confessed or traversed and avoided or denied is true to the knowledge or belief of this defendant; all of which this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays hence to be dismissed with his reasonable costs in this behalf most wrongfully sustained.

H. S. DAVIS.

WALTER D. DAVIDGE,
JOHN E. NORRIS,
Solicitors for Def't.

CITY OF WASHINGTON,
District of Columbia, ss:

41 On this 14th day of August, 1869, before me, clerk of the supreme court of the District of Columbia, personally appeared the defendant, Henry S. Davis, whose name is subscribed to the foregoing answer, and made oath that he has read said answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters that he believes it to be true.

H. S. DAVIS.

Subscribed and sworn to before me this 14th of August, 1869.

R. J. MEIGS, *Clerk.*

42 H. S. D.—EXHIBIT No. 1.—(*Filed August* 14, 1869.)

Whereas the undersigned, Samuel A. Peugh, of the city of Washington, in the District of Columbia, having heretofore sold and conveyed to Henry S. Davis, of the said city, two certain squares of ground in said city, the same being squares numbered nine hundred and ten (910) and nine hundred and eleven (911), in the said city, the said sale and conveyance having been by the said Peugh made with the full assurance and promise of a good and indefeasible title in fee simple, though the said conveyance contains only a special warranty, the said conveyance to said Davis bearing date on the fourth day of March, A. D. 1857, and being recorded on the seventh day of September, A. D. 1857;

43 And whereas the title to the said squares so conveyed, as aforesaid, to said Davis, having been now questioned and disputed, the said Peugh doth now, for himself, his heirs, executors and administrators, promise, covenant and agree to and with the said Henry S. Davis, his heirs and assigns, in the manner following—that is, that he, the said Samuel A. Peugh, and his heirs, shall and will warrant and forever defend the said squares of ground and appurtenances as conveyed, as aforesaid, unto the said Henry S. Davis, his heirs and assigns, from and against the claim or claims of all persons whomsoever;

And, further, that the said Peugh and his heirs, executors and administrators shall and will pay and refund to said Davis, his heirs

44 or assigns, all and singular, the loss, cost, damage, and expenses, including the consideration in said deed or conveyance which or to which the said Davis, his heirs or assigns, shall loose, incur, pay or be subject to by reason of any claim or litigation against or on account of said squares of ground, or either of them;

And for the full and faithful observance and performance of all the covenants and agreements aforesaid, and for the payment of all the sum or sums of money as therein provided, in the manner prescribed as aforesaid, the said Samuel A. Peugh doth hereby bind himself, his heirs, executors, and administrators, and each and every of them, firmly by these presents.

In testimony whereof, the said Samuel A. Peugh doth herein

45 so set his hand and seal, on this ninth day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

S. A. PEUGH. [SEAL.]

Signed, sealed, and delivered in the presence of—
FRANCIS MOHUN.
W'M H. WARD.

Washington, D. C., [illegible]

Received of Henry S. Davis two thousand dollars, [illegible] in full for the purchase of squares Nos. 910 and 911 in the city of Washington.

$2,000. S. A. PEUGH.

46 *Replication.—Filed September 20, 1869.*

In the supreme court of the District of Columbia, the 19th day of September, 1869.

SAMUEL A. PEUGH, COMPLAINANT, vs. HENRY S. DAVIS, DEFENDANT. } In equity. No.

The complainant hereby joins issue with the defendant.

RICHARD T. MERRICK,
EDWIN L. STANTON,
Solicitors for Compl't.

47 *Plaintiff's testimony.—Filed July 23, 1872.*

In the supreme court of the District of Columbia.

SAMUEL A. PEUGH vs. HENRY S. DAVIS. } Equity. No. 1713. Docket 9.

Testimony for plaintiff.

Depositions of witnesses produced, sworn, and examined on behalf of the plaintiff, taken before R. D. Mussey, examiner in equity of the supreme court D. C.

In the supreme court of the District of Columbia, September 30, 1869.

SAMUEL A. PEUGH vs. HENRY S. DAVIS. } In equity. No. 1713.

To Mess'rs W. D. DAVIDGE & J. E. NORRIS, solicitors for the defendant:

48 Please take notice that testimony in behalf of the complainant in the above-entitled cause will be taken before Examiner Mussey, at his office, No. 3 4½ street, on Saturday, Oct. 2d, at 10 o'clock a. m.

R. T. MERRICK,
E. L. STANTON,
Solicitors for Complainant.

SATURDAY, *Oct. 2d*, 1869.

Pursuant to notice, M'r Stanton, of counsel for plaintiff, appeared with a witness to be examined at my office, No. 3 4½ street, at 10 o'clock a. m.

M'r Norris, of counsel for defendant, filed with the examiner the annexed paper.

M'r Stanton insisted on proceeding.

The examiner postponed the examination until Monday, the 4th inst., at 7 o'clock p. m., at the expense of the defendant.

49 In the supreme court of the District of Columbia.

SAM'L A. PEUGH
vs.
HENRY S. DAVIS. } Equity. No. 1713.

To Gen'l R. D. MUSSEY, comm'r in chancery:

D'R SIR: My associate counsel in the above cause is absent from the city, and it will not be in my power to attend before you to-day on behalf of the defendant in the taking of depositions by the plaintiff, and I therefore ask that there may be a postponement to as early a day as may be convenient to you and plaintiff's counsel.

Very respectfully, your ob't serv't,

JOHN E. NORRIS,
Sol'r for Defendant.

OCT. 2D, 1869.

50 MONDAY, *October 3d*, 1869.

Met, pursuant to adjournment, at seven o'clock p. m.

M'r E. L. Stanton appeared for the plaintiff, and

Mess'rs Davidge and Norris for the defendant.

By consent of counsel, the deposition was taken in short-hand.

SAMUEL A. PEUGH, a witness produced, sworn, and examined on behalf of the plaintiff, being examined by M'r Stanton, of counsel for plaintiff, says:

Direct examination:

Q. M'r Peugh, state if you are the plaintiff in this cause and a resident of the District of Columbia, and, if so, how long you have resided here.

A. I am the plaintiff in this cause, and a resident of the District of Columbia, and have resided here for over twenty years.

51 Q. In the year 1857, did you have any business transactions with the defendant, H. S. Davis, with reference to the borrowing of money from him?

A. I did, sir.

Q. On one occasion, or on more than one occasion?

A. On more than one occasion.

Q. When was the first occasion, and what was the transaction?

A. The first occasion was some time about the month of March, 1857; I borrowed of M'r Davis two thousand dollars ($2,000), and gave him a deed upon two squares, Nos. 910 and 911, in this city as security for the same.

Q. Was there any agreement or understanding between yourself and Mr. Davis in respect to that security?

(Objected to.)

A. There was this agreement, that he was to hold the deed
52 that I gave him, and to return it to me when the money was paid him; and an amount of money in consideration of the loan, which was one hundred fifty dollars ($150), at the end of 60 days.

Q. Was that the period of the loan?

A. That was the period of the loan.

Q. Do you recognize Exhibit A, filed with the bill of complaint, as a copy of that deed?

(Objected to.)

A. If I had the original deed I could recognize it better, but this is to the same purport and of the same nature, and for the same transaction, and I have no doubt in my own is a copy of the original deed.

(Objected to.)

Q. At the expiration of the 60 days for which you say the loan was made, was anything done by you in reference to it; and, if so, what?

(Objected to.)

53 A. I paid the money, the $2,000, and paid M'r Davis $150 for the use of it for the time.

Q. Was anything done with the deed?

A. The deed was returned to me.

Q. What was the next transaction and the date of it, between yourself and the defendant?

A. Within a few days thereafter, I needed money and borrowed $1,500 of M'r Davis; gave him the same deed as security for 60 days, with the pledge to return me the deed upon the payment of the $1,500 and the same pro rata rate of interest, namely, $112.50.

Q. During the period of your first loan, had the deed been put upon record, do you know?

(Objected to.)

A. I had not been.

Q. At the expiration of the time of this second loan, did anything further occur?

54 (Objected to.)

A. I was unable to repay M'r Davis his money, and asked an extension of another 60 days of the loan, for which I paid him a like sum of money.

Q. Did you pay him the interest on his second loan at the rate of which you speak, $112.50?

A. I did, sir.

Q. Fix as near as possible the date at which you received this loan of $1,500.

A. It was a very few days after the payment of the first loan of $2,000.

Q. In what month was this loan of $1,500 made, as nearly as you can fix it?

A. I have been able to fix it with more accuracy by some memoranda which I have recently found among my papers, as being in the month of May, 1857.

55 Q. For what purpose was this deed given the second time, at the time of the loan in May?

(Objected to.)

A. For the purpose of securing M'r Davis in the loan that I made of him.

Q. Was there any understanding or contract in regard to the disposition to be made of the deed?

(Objected to.)

A. The deed was to be retained by M'r Davis, and to be returned to me when the money and the interest, that is the $112.50, were paid.

Q. Was the deed designed to have any other effect than as security for the payment of the loan; principal and interest?

(Objected to.)

A. It was both designed and expressed to have no other effect.

(Objected to.)

Q. Did you pay the interest on the extension of this loan or not?

56 A. I did pay the interest on the extension of this loan.
Q. At what rate?
A. The same sum, $112.50 for the sixty days.
Q. Did you pay the principal?
A. I did not, sir.
Q. Why not?
A. Because I was unable to pay it.
Q. Were there any further payments of interest in the year 1857 after you paid the interest on the extension?
(Objected to.)
A. I do not recollect of having paid M'r Davis any interest after the second payment upon the extension of the loan of $1,500.
Q. Was there any later transaction between yourself and M'r Davis in respect to that loan?
A. There was.
Q. What was it?
57 A. The next transaction was an additional loan from M'r Davis of $500.
Q. Was any consideration required of you for that additional loan of $500?
(Objected to.)
The witness said: I want to ask M'r Stanton what he means by the word "consideration." And M'r Stanton thereupon put the question in this form:
Q. Was anything required of you as a consideration to your receiving this additional loan of which you have spoken, or was it entirely gratuitous on the part of M'r Davis, without anything being required or obtained of you?
(Objected to.)
A. Before M'r Davis would let me have the other $500 he required of me a certain paper, the purport of which I did not like, and at
58 first objected to its execution; but M'r Davis said I must execute it in order to protect him against any liability for costs in an ejectment suit that had been instituted by Charles H. Wiltberger, and said to me at the time, "Peugh, you can trust this matter with me."
Q. Were these squares 910 and 911, of which you say the deed was given as security for the loan, improved or unimproved at the time of making the loan and giving the security?
A. They were improved by an excellent board fence; a high board fence which I placed there myself.
Q. Was this additional loan of $500, to which you have just referred, to bear interest?
(Objected to.)
A. My engagement with M'r Davis was to pay him precisely the same rate of interest which I paid upon the other.
59 Q. Was there any security given to M'r Davis for this increased indebtedness?
(Objected to.)
A. Two papers, the deed and the paper that has already been referred to.
Q. After the loan of the $1,500 was originally made, who was in possession of the property?
A. I was.
(Objected to.)
Q. Did you continue in possession?
(Objected to.)

A. I did continue in possession and cultivation of the lots.

Q. How long did this cultivation continue?

A. It continued up to near the end of the year 1861, when the Army destroyed the fence; burned it up.

Q. In what part of the city are these squares?

60 A. The squares are situated between 8th and 9th streets east; 911 bordering on H street north, and 910 the next square north, between I and K.

Q. Do you know how many square feet there are in them?

A. The two contain about 157,000 square feet.

Q. Did M'r Davis ever make any objection to the cultivation of which you speak?

A. He never made the slightest objection, nor I never knew that he had any objection.

Q. What made you stop cultivating them?

(Objected to.)

A. The Army destroyed the fence, and the ground was occupied for Army purposes during nearly the whole time of the war, and nothing was safe to be cultivated in the neighborhood, because of the depredations of the Army.

61 Q. Were you ever called upon to pay the interest which you say you agreed to pay upon this loan?

(Objected to.)

A. I was repeatedly called upon by M'r Davis to pay both principal and interest, and at one time, upon one of those calls, about the year 1862, he said to me, "Peugh, you recollect you were to pay me 2½ per cent. a month for this money." It was in the beginning of the year 1862; I recollect it perfectly; it was at the corner of Willard's Hotel; I recollect the transaction as well as I do anything in my life.

Q. Was the demand at that time for payment of interest or payment of principal, or both?

(Objected to.)

A. The demand at that time was for the payment of the interest.

62 Q. What was the general character of these demands of which you speak, for the payment of principal and interest, as to frequency or infrequency, and the manner in which they were made?

(Objected to.)

A. I scarcely saw M'r Davis without his making allusion to the payment of the money due him.

Q. Did you owe him any other money?

A. Not that I recollect of.

Q. Did you exercise over those squares any other act of ownership than the cultivation of which you speak, subsequent to your giving the deed as the security for the loan?

(Objected to.)

A. I continued uninterruptedly to exercise ownership over them.

Q. Did you do anything with reference to their possession at

63 any time subsequent to your cessation of the cultivation of these squares?

(Objected to.)

A. From the cessation of the cultivation of those squares, the army occupied them more or less during the whole war, but I at the close of their occupancy for army purposes, I leased those squares to a colored man by the name of George Simms; that was the square bordering on H street.

Q. Did your tenant enter into possession?
(Objected to.)
A. The tenant built a house and entered into possession of the square.
Q. Was his possession as your tenant acquiesced in by M'r Davis?
(Objected to.)
A. After Simms had become an occupant of the house he built upon the ground, at an expense of a few hundred dollars, I was
64 called upon by some one from M'r Davis, objecting to what I had done, and claiming, for the first time to my knowledge, the squares as his.
Q. Had M'r Davis ever objected before to any acts of ownership by you over the premises?
(Objected to.)
A. He never did; and I was never more surprised than when the communication came to me.
M'r Stanton announced the direct examination of the witness to be closed.
M'r Davidge said he had no question to ask the witness, but desired before he absolutely waived the cross-examination to have the "short-hand" notes transcribed into "long-hand."
M'r Stanton objected to that course, and insisted that the cross-examination should go on to-night if at all.
65 M'r Davidge said, "Call another witness."

There being no further witness for the plaintiff present, the further examination of witnesses for the plaintiff was postponed until until Wednesday evening, the 6th inst., at the same place, at 7 o'clock p. m.

SAM'L A. PEUGH.

And thereupon, at 8.30 o'clock p. m., adjourned.

WEDNESDAY, *October* 6th, 1869.

Examination of witnesses on behalf of the plaintiff resumed as per adjournment, at the same place, and at 7 o'clock p. m. Present, the same counsel as before.

JOHN MANKIN, a witness produced, sworn, and examined on behalf of the plaintiff, says:

I reside in this city. I am 70 years of age, and by occupation
66 am a laborer.

Being examined by Mr. Stanton, of counsel for plaintiff, he says:

Direct examination:

Q. Whereabouts in this city do you reside?
A. I live on the Island, on Virginia avenue, between 3 and 4½ streets. I have lived there since I left M'r Peugh; have a house of my own out near M'r Peugh's, but for the last three years I have lived on the Island.
Q. On what street did you live before you went on the Island?
A. On 8th street east, between I and Boundary streets.
Q. What do you know, if anything, about acts of ownership exercised by M'r Samuel A. Peugh over two squares of ground in that neighborhood?
A. I do, sir. It was me that put the fences down; me and two of my children, in the year 1855.
67 Q. Whereabouts were these two squares of ground?

A. They are from 8th to 9th, down to N street.

Q. How near did you live to those squares?

A. I lived only to the other side of the square, just convenient alongside. There was nothing between me and those lots but the railroad.

Q. Who employed you to put the fences down?

A. M'r Peugh did, and paid me for it.

Q. Do you know how long the fences remained there?

A. The last of the fences I took out; the posts and the small parts I took them up to M'r Peugh's; this was in 1861. I see 'em going and burning and I couldn't hinder it; the soldiers wouldn't let me.

68 Q. What do you mean by "their burning"? Who burnt them?

A. Soldiers. I don't know what soldiers they were; there were many soldiers came in there; they took my own little fence; they were camped there.

Q. What do you know, if anything, about the ground having been cultivated before the fences were taken up?

(Objected to.)

A. I know they were; there were potatoes and oats put in.

Q. Who cultivated the ground, and when?

A. M'r Peugh got some colored men by the name of Dunlap to cultivate them; this was in the year 1855.

Q. How long did that cultivation by M'r Peugh go on?

A. I believe it went on until the fence was gone, in 1861; it

69 was no use cultivating it after the fence was down.

Q. Were you ever employed in this cultivation?

A. I was, to be sure. Was employed by M'r Peugh. In 1855 we begun it. I was there all the time until he left himself. I often worked on these squares during that time.

Q. When was the last of the fences taken away?

(Objected to.)

A. Because we didn't want to let them all go; they were standing there and nobody to look after them.

Cross-examination:

And the witness being further interrogated by M'r Davidge, of counsel for defendant, says:

Q. Did you lease these squares from Peugh?

A. No, sir; I didn't, but I worked upon them when he called

70 upon me to do it. I was in his house at that time; had two rooms in the lower part of.

Q. Where was Peugh house; the house you lived in with him?

A. It was on the corner of K and 7th street east.

And the witness being further examined by M'r Norris, of counsel for defendant, says:

Q. Up to what year did you work there?

A. I worked on them until '61, off and on; put in the crops and took care of them; spading and shoveling and so on; and had an eye on the fence all the time.

Q. Do you know of any one else occupying those grounds and working them, or any part of them?

A. I do not.

his
JOHN + MANKIN.
mark.

71 Subscribed and sworn to before me this sixth day of October, A. D. 1869.

R. D. MUSSEY,
Ex'r in Equity, Sup. C't D. C.

And there being no further witness for the plaintiff present, the further examination of witnesses for the plaintiff was postponed until Friday evening, the 8th inst., at the same place, at 7 o'clock p. m.
And thereupon, at 8 o'clock p. m., adjourned.

FRIDAY, *October* 8, 1869.

Met at 7 o'clock p. m. pursuant to adjournment; present, as before.
But, there being no witness for the plaintiff present, at 7 o'clock 30 minutes p. m. adjourned to Monday evening, the 11th inst., at the same place, at 7 o'clock p. m.

MONDAY, *October* 11, 1869.

72 Met at 7 o'clock p. m. pursuant to adjournment; present, as before.

WILLIAM BLANCHARD, a resident in Charles County, Maryland, about 56 years of age, and by occupation a farmer, a witness produced, sworn and examined on behalf of the plaintiff, being examined by M'r Stanton, of counsel for plaintiff, says:

Direct examination:

Q. Did you ever reside in this District? and, if so, please state at what period.
A. All my life up to '61.
Q. Have you any knowledge of the possession of the squares Nos. 910 and 911 in this city by M'r Sam'l A. Peugh; and, if so, what?
A. I know that M'r Peugh purchased them in '55 or '56, enclosed them and cultivated them a number of years. I don't know how many; five or six.

73 Q. In what year did you say you left this city?
A. In November, 1861.
Q. Had you seen the squares during that year?
A. Yes, sir; in summer and spring of that year; the time the troops were arriving or about that time.
Q. Do you know to what period their cultivation by M'r Peugh, whether or not continuously up to that period?
(Objected to as leading.)
Whereupon M'r Stanton modified the question so as to read thus:
Q. Do you know to what period their cultivation by M'r Peugh extended?
A. I do not; he made about 3 crops on them that I know, corn and oats, and pastured them, I think.

74 Q. Who was in possession of those squares in 1861, the last time you saw them?
A. I could not say; there was nobody living on them; they were enclosed with nothing but a fence.
Q. Were you acquainted with the value of real estate in that locality in the year 1858?
(Objected to.)
A. I think I was.
Q. What do you consider to have been the value per foot of those squares in that year?

A. Four or five cents.

Q. Do you know who cultivated those squares between the years 1858 and 1861; and, if so, who was it?

A. I don't know that there was any crop raised on them in those years; they were cultivated with corn and oats and pastured. I think the oats and corn were before '58. The first year they were in
75 closed they were in oats and corn, I think, and afterwards in grass.

Q. Do you know by whom they were used for pasturage? and, if so, state.

A. I think M'r Peugh let a butcher there have them one year; the next neighbor there; I don't know what his name is.

Q. In what period were they used for pasturage?

A. Until 1861. They were a pasture-lot, enclosed, when I saw it last in 1861.

Q. Do you know who had them after M'r Peugh let the butcher have them?

A. I don't.

Q. What was the location of those squares?

A. One of them was on H street north; I think go back from H to K, and between 7th and 8th, I reckon.

76 Q. In what location are they in respect to being on or off the thoroughfares of business and travel?

A. One of the squares, that on H street, is on the main road out of the city, the road that goes over Benning's bridge and the Baltimore road.

And the witness being further examined by M'r Davidge, of counsel for defendant, says:

Cross examination:

Q. You speak of seeing these squares in grass. Do you refer to the natural growth?

A. No; that was plowed up in the crop, the first crop. Whether there was seed sown or not, I don't know.

Q. How long after these squares were purchased by M'r Peugh was it that you saw them used for pasturage?

77 A. They were used for pasturage and to enclose cattle up to 1861, but I don't know that M'r Peugh rented it but the one year.

Q. What year was that; how long after his purchase?

A. That would be the 3d year after his purchase, I think. One year he had it in corn and one in oats, and the next year he rented it out to that man to put cattle in. Beyond that I know nothing, but I always understood that M'r Peugh had it.

(So much of the preceding answer as consists of the witness "understanding" is objected to.)

Q. Down to 1858, were the streets that bounded these squares graded or paved?

A. I think not. I am pretty certain they were not. The road might have been opened, but I don't know. There was no grading or paving.

78 Q. Where did you reside whilst you lived in the city of Washington?

A. Most of my life I have lived on 8th street, by the Patent Office, until I was 40 years old.

Q. Did you own any property near these squares?

A. I owned some in the eastern section of the city, five or six squares

beyond; in squares 1030 and 1032 about 150,000 feet. These squares were further east than 910 or 911. They are between 13th and 14th east and E and F and Kentucky avenue.

Q. When did you purchase that property?

A. Some in '57, some in '56, and some in '58.

Q. From whom?

A. Some from the Government and some at a public sale of "Roach's heirs," I think.

Q. What did you pay for it per foot?

79 A. One and two cents; one for some and two for others. For some that I bought from Mr. Todd I paid two cents.

Q. It averaged about how much?

A. I couldn't tell now. I bought 23,000 feet at two cents, and bought the same number of feet at two cents from Mr. Todd. I bought some from Mr. Peugh at two cents; bought 10,000 feet from the government for one cent, and 58,000 at Roache's sale for one cent. I suppose the most of it was at two cents.

Q. How much did you buy from Peugh?

A. I think it was about 22,000 or 23,000 feet. I don't remember exactly.

And the witness, being further examined by Mr. Norris, of counsel for defendant, says:

Q. How many square feet did you buy in either of these squares?

80 A. I got it all in one square but one lot. I bought in three squares, but swapped some so as to get it together. I exchanged with a man named J. L. Scott, who would not sell, but who would swap foot for foot.

Q. What square was that?

A. Square 1030.

Q. Mr. Blanchard, did you never estimate what that cost you per foot?

A. I may have; I have forgotten it.

And the witness, being further examined by Mr. Davidge, of counsel for defendant, says:

Q. Have you any other means of forming an estimate of the value of squares 910 and 911 than such as you possessed from purchasing property in the neighborhood?

A. The general knowledge of the value round the city. It is

81 in a nice position on a street that I call a thoroughfare street in a growing part of the city. I mean to say it is by the plan of the city.

Q. Do you mean to style the neighborhood in which squares 910 and 911 lie "a growing part of the city" in the year 1858?

A. Yes, sir; that section of the city.

Q. Would not the city assessments indicate about the value of these squares?

A. No, sir; the city assessments indicated the value of my lots at two cents and I sold them for eight.

Q. When did you sell them for 8?

A. In 1867.

Q. Do you mean to say that you could have obtained 8 cents for your lots in 1858?

A. No, sir; but I mean to say that the city assessments is no criterion of value. It may be now. I' wasn't then.

82 Q. Did you make any sales of any of your property in this neighborhood in 1858?

A. No, sir.

Q. Did you ever have an offer for any of it?

A. No, sir; I didn't want to sell it. I had enclosed it and planted it with trees for my own use.

Q. During the war, let us say about the year 1864, and perhaps some time before, was there not a most extraordinary rise in the value of city property, and especially of such as lay in the eastern section of the city?

A. I was not in the city during the war. I left in November, 1861, and came back in 1867.

Q. But when you came back did you not take pains to inform yourself of the value of real estate in that neighborhood?

83 A. I took pains to know the law of demand and supply. It was self-evident that there had been a rise.

Q. Was not the rise extraordinary?

A. Yes, sir; the increase of population was extraordinary while I was away.

Q. Was not the value of property quadrupled, quintupled, sextupled?

A. In many neighborhoods it was.

Q. Was not the rise in that particular neighborhood as extraordinary as anywhere else?

A. Nearly so. There were other neighborhoods that improved faster and increased faster in value.

Q. Your property, I believe, is situated near what is known as Lincoln depot?

A. Near Isherwood spring. I don't know where Lincoln depot was.

Q. How do you know that M'r Peugh bought these squares in '55 or '56?

84 A. From his telling me so. He scarcely bought a piece of property that I did not know; and I picked out a great deal for him that he did buy. We were intimate. He is a brother-in-law of mine.

Q. Did he tell you from whom he bought them?

A. He may have done so, but I don't remember now.

Q. Did he tell you what he paid for them?

A. He may have done so, but I don't remember; I can't tell how much per foot.

Q. For the purchase you stated you made of property in that neighborhood, you, of course, obtained deeds and put them on record, did you not?

Q. Yes, sir.

85 Q. You have spoken of the rise of property on your return to the city in 1867. Do you recollect whether or not there was a financial crisis throughout this country in 1857?

(Objected to.)

Q. I don't remember.

Q. You don't remember that property in this city was depressed in that year, and for some time subsequently, to a very low point, in consequence of the crisis pervading the country generally?

A. No, sir; I do not.

Q. In speaking of the cultivation of these squares by M'r Peugh for 3 years after his purchase, do you refer to both the squares?

Q. Yes, sir; they were both enclosed in one lot, I think; though I would not be positive.

Q. Was the intervening street also enclosed?

I think so; it must have been if they were in one lot.

86 Q. Were both squares cultivated?

A. Yes, sir.

And the witness, being again examined by M'r Stanton, of counsel for plaintiff, says:

Redirect examination:

Q. Are those squares, 910 and 911, on or off the present grade of the streets in that locality?

(Objected to.)

A. They are on grade. There is not much grading. It is one reason for the value of a lot in an unsettled part of the city that it lies very nice as to the grade; that it is not much cost to grade the lot. With a low-priced lot especially it makes much difference.

Q. What was and is the situation of the property which you purchased in '56, '57, and '58 in respect to nearness to or remoteness from the business and travel of the city and street improvements?

A. It is between 13th and 14th streets east and E and F north, on the hill near Isherwood's spring; only one of these "triangular squares" between that and the boundary.

Q. Is it on or off the thoroughfare?

A. I call it off.

Q. Are there any streets open out there?

A. Not then there was not, and I think not now, nearer than Maryland avenue.

Q. When did you mean that your property was assessed at two cents per foot; at the time when you sold it for eight cents per foot?

A. Yes, sir.

Q. In what year was that assessment made?

A. I don't know.

88 Q. What were the extent and degree of your acquaintance with M'r Peugh's transactions in real estate during the years 1855, 1856, 1857, and 1858?

(Objected to.)

A. I don't think that M'r Peugh ever purchased a piece of property that he did not tell me and tell me what he gave for it.

Q. What was your acquaintance in respect to his sales—in respect to his sales of property?

(Objected to.)

A. I don't know that he ever sold a piece without telling me what he got for it. We knew each other's affairs always. We would often advise with each other.

Q. Did he tell you at that time that he had sold those squares, 910 and 911, to M'r Henry S. Davis?

(Objected to.)

89 A. I never heard M'r Peugh or anybody else say that he had sold them. I always understood that they were his until I went away.

WM. BLANCHARD.

Subscribed and sworn to before me this 11th day of October, A. D. 1869.

R. D. MUSSEY,
Ex., &c.

TIMOTHY MANKIN, resident on Ohio avenue, between 12th & 13th

street', in this city, about 33 or 34 years of age, and by occupation a driver of a lumber-wagon, a witness produced, sworn, and [illegible] behalf of the plaintiff, being examined by M'r Stanton, of counsel for the plaintiff, says:

Direct examination:

Q. Have you any knowledge respecting two squares of ground, the property of M'r Samuel A. Peugh, situated between 8th and 9th streets east and H & K north?

A. Not any more than I was living with M'r Peugh from '52, I believe, up to '56, and during that time he told me that he had bought those squares and he went down there one day and showed me the square stones, which were plain at that time, of each square. Then I went to work, me and my father and one or two more, dug posts holes and planted posts around both squares, and put a fence around it, and closed them in.

Q. Under whose direction?

A. Under M'r Peugh's.

Q. What, if anything, was done with the squares afterwards?

A. They were cultivated with oats and corn. The first year, I believe, it was with corn and the next with oats.

Q. What was the first year of their cultivation?

A. 1855. That was the year they were closed in, and they were cultivated the same year.

Q. Were they used for any other purpose; and, if so, what?

A. Yes, sir; they were used for pasturing cattle.

Q. How long did this use for crops and pasturage continue?

A. From the time it was closed in. It was pastured, I believe, up to '60 or '61.

Q. You stated that you lived at M'r Peugh's in '56. What was your acquaintance with those squares between '56 and '61?

A. Not more than I seen them closed in, as I had done so myself, and I seen them tilled a while and in pasture sometimes.

Q. Where did your father reside at that time?

A. He resided on K street, between 6th and 7th.

Q. How far from these squares?

A. Only one square, I suppose across the street, and one square west.

Q. What was your occupation at that time?

A. I drove a milk-wagon up to '59, I believe.

Q. Were you or not in the habit of passing those lots; and, if so, how often?

A. Yes, sir. Probably I would pass them, maybe 3 or 4 times a week, and maybe once a week.

Q. Were the squares enclosed separately or together?

A. Separately. I enclosed them myself.

Q. Two fences or one?

A. They were divided; I street was open between them.

Q. Subsequent to the putting up of those fences, what, if anything, did you do upon them?

A. I done nothing, only to fence them in.

Q. What, if anything, do you know about repairs to the fences? (Objected to.)

A. I don't know anything about repairs.

Q. What, if anything, do you know about the removal of the fences?

A. I don't know anything more than that the soldiers, I believe, camped upon them and took the fences off them and burned them.

Q. Who had the squares up to that time?
(Objected to.)
A. M'r Peugh.
Q. How often did you visit your father during that period?
(Objected to.)
94 A. I may have been there once or twice a week, probably; I mean from '56 to '61.
Q. Did or did not your acquaintance with those squares continue during that period?
A. I paid attention as I went backwards and forwards, as I had fenced them in.
And the witness being further examined by M'r Davidge, of counsel for defendant, says:

Cross-examination:

Q. You say you drove a milk-wagon from '56 to 59. F' whom did you drive?
A. I drove it, for part of the time, for John Wheeler Smith and Francis H. Smith, his brother. They lived by the Eastern Branch, on the north side of the Anacostia Bridge.
Q. Did you sleep at their house from '56 to '59?
95 A. Yes, sir.
Q. Did you attend to your own horse?
A. Yes, sir.
Q. You were occupied, then, every day except Sunday?
A. Sunday too.
Q. What holidays had you?
A. Had none, sir.
Q. How far did these Smiths live from these lots that you had enclosed for M'r Peugh?
A. I believe it was about a mile or three-quarters of a mile.
Q. These squares did not lie on the line of your travel in driving the milk-wagon, did they?
A. Not in travelling into the city, but in travelling home.
Q. What time did you get home?
A. It was between 8 to half past 9 in the morning.
Q. How far did you pass from these lots?
96 A. I went by one of them, that on H street.
Q. You had no occasion to notice particularly these squares at this time?
A. Not any more than that I seen where I had labored once; remembered me of being a boy at that time.
Q. You never examined, after leaving M'r Peugh, the fence, to see in what condition it was, did you?
A. No, sir, not any more than that I seen that they were not going to destruction.
Q. Do you mean to say that in passing home you took any pains to look at the fence, all around each square, to see that it was not going to destruction?
A. Only the square that I must go by, so far as I could see from where I was passing.
Q. How many lines of fence did you travel along?
97 A. One.
Q. Then the other lines of fences of the two enclosures might have been very much out of repair and you might not have known it, might they not?

A. No; for I could see from where I was passing whether there was any of it out of repair on that square.

Q. Had you any occasion to observe particularly; was it a matter of any concern to you whether the fences were out of repair or not?

A. No, sir; only that I had put it up, and father lived on the same side as I went out, and I took notice as I went along where I lived and where I worked.

Q. What cattle grazed in there, do you know?

98 A. To the best of my knowledge, cows and bullocks belonging to butcher Kahl; I believe that was his name. He lived in the neighborhood.

Q. M'r Peugh rented the square to him for one year, did he not?

A. I don't know.

Q. What other cattle grazed there?

A. I don't know.

Q. How do you fix the time when you stopped driving the wagon, as having been in the year 1859?

A. It might have been '58, but to the best of my belief it was '59.

Q. What did you do after you stopped driving the milk-wagon?

A. I came here on 8th street west, between D and E north, and worked in a livery-stable.

Q. What was your occupation there?

A. Taking care of the horses.

Q. Did you sleep in the stable?

99 A. Once in a while, in our turns. A part of the time we had to stay there a week, in our turns, and would be off two weeks at night.

Q. All day you were employed, were you not, at the stable?

A. Yes, sir; and sometimes at night when horses would come in.

Q. How long did you continue so employed?

A. Until '61 or '62, I believe.

Q. Whilst employed at the stable you hadn't much opportunity of looking after these squares and the fences, had you?

A. Only of Sunday, when I would go out and see my father I would go by them.

Q. When at your father's you had no particular interest in examining these squares and the fences, had you?

A. No, sir, only in passing by.

100 Q. Now, can you say that after the time you stopped driving the milk-wagon you ever saw cattle grazing on either of those squares?

A. No, sir; I haven't seen any cattle; I don't remember.

Q. Then all the cattle you saw there was before you stopped driving the wagon, was it not?

A. To the best of my belief.

Q. You have said M'r Peugh had the squares up to the time the soldiers burned the fences. How do you know that?

A. I don't know but as I heard from my father that M'r Peugh owned them still.

And the witness being re-examined by M'r Stanton, of counsel for the plaintiff, says:

Redirect examination:

Q. To which square did your father live nearer, the square you passed by in the milk-wagon or the other?

101 A. The other.

TIMOTHY + MANKIN.

Subscribed and sworn to before me this 11th day of October, A. D. 1861.

R. D. MUSSEY,
Examiner.

There being no other witnesses on behalf of the plaintiff in attendance, the further examination of witnesses for the plaintiff was postponed until Thursday, the 13th inst., at 7 o'clock p. m., at the same place.

And thereupon, at 9 o'clock and 25 minutes p. m., adjourned.

THURSDAY, *October 14th*, 1869.

Met pursuant to adjournment *to adjournment* at 7 o'clock p. m. Present as heretofore.

HENRY DREIR, aged about 53 years, a gard'ner by occupation, living in this city on East 7th street, between I and K streets, a wit-
102 ness produced, sworn, and examined on behalf of the plaintiff, being examined by M'r Stanton, of counsel for plaintiff, says:

Direct examination:

Q. Have you any knowledge of the two squares of land belonging to M'r Peugh, between H and K streets north and 8th and 9th east? And, if so, state how long you have knowledge about them.

A. I have known about them since '59.

Q. How near to them do you live?

A. I live on the east side of 7th street, and my ground runs back to 8th.

Q. How long have you lived there?

A. 14 years.

Q. Were you ever hired to do anything about that property; and, if so, what?

A. At the time the war broke out M'r Peugh told——
103 (M'r Davidge objects to witness stating what Peugh told him.)
——me to watch the fence.

Q. Were there fences around the squares; and, if so, what kind were they, and how long were they there?

A. There were fences around the squares four planks high. I could not tell you so very particular how long they were there, but at the time the war broke out the fence was mostly new. I know that.

Q. Do you .who put the fences there; and, if so, who did it?

A. I don't know who put the fences there.

Q. For what was the land in those squares used?

A. Corn and oats.

Q. How long were corn and oats raised there?

A. For a couple of years before the war, '60 and '61.

104 Q. Whose corn and oats was it?

A. I couldn't tell that particular. The land belonged to M'r Peugh, and I suppose the corn and oats did.

(Objected to.)

Q. Up to what time were the fences around the squares?

A. '61; not there after '61; soldiers took them down.

And the witness being further examined by M'r Davidge, of counsel for defendant, says:

Cross-examination:

Q. When were these squares fenced in; about what time?

A. I couldn't tell you particular, but I [illegible]

Q. I understand you to say that only two crops were [illegible] ground, one of corn and the other of oats. Am I right?

(Objected to.)

105 A. Yes, sir.

Q. What makes you think these crops were raised in the years '60 and '61? How do you fix those years?

A. Don't understand the question.

Q. Mr Davidge repeats the question.

A. It was in '59 and '60; when the war broke out in '61 the soldiers took everything away.

Q. How can you fix the years '59 and '60? That was a long time ago.

A. Just about that time I was a rope-maker, and made rope out there, and it sometimes took 3 or 4 squares to make a long rope on—a [illegible] rope, or something of that sort. And so I worked over those squares making my rope.

Q. When did you work over those squares making your rope?

A. So long as I made rope, and I gave up rope-making about

106 7 or 8 years since. I stretched the rope on I street between the two squares.

Q. How long were you a rope-maker?

A. In all about 10 or 12 years.

Q. Did you work all that time out there?

A. Yes, sir.

Q. Then you worked in that neighborhood 10 or 12 years making rope, and about 7 or 8 years ago gave up rope-making and became a gardener. Am I right?

A. Yes, sir.

Q. Now I ask you again, as you worked near those squares 10 or 12 years making rope, what fact enables you to fix the years '59 and '60 as the years when corn and oats were grown on the squares?

A. Just what I got from my eyes every morning when I got up.

Q. Have you had any conversations with Mr Peugh about this case?

107 No, sir.

Q. Never said a word to him about it?

A. No, sir; except just this evening he came to my house and just asked me to come here.

Q. He did not tell you what he wanted, did he?

A. No, sir.

Q. Did he bring any writ or paper with him?

(Objected to as irrelevant.)

A. No, sir.

Q. What did you and he talk about as you came up here?

A. Mr Peugh just he told me about the fence—nothing else.

Q. Then you did talk some about the case, didn't you?

A. He didn't say nothing at all about the kind of case.

Q. What did he say about the fence?

108 A. Just this evening he came and told me that I was to come here and tell when the fence was was gone; that was all Mr. Peugh told me.

Q. What did he say about the crops?

A. He didn't say nothing at all about the crops.

Q. What else did you talk about as you and he came up here?

A. Nothing at all.

Q. You said nothing to him, and he said nothing to you?

A. Yes, sir.
Q. Who came with you?
A. M'r Joachin and my wife.

HENRY DREIER.

Subscribed and sworn to before me this 14th day of October, A. D. 1869.

R. D. MUSSEY,
Examiner.

NOTE.—The above witness was a German, speaking very broken
109 English, and appearing to find difficulty in understanding some of the questions put to him, which questions the examiner thereupon put in a form slightly varied, but preserving their substance.

R. D. MUSSEY,
Examiner.

M'r's DOROTHE DREIER, the wife of the preceding witness, a witness produced, sworn, and examined on behalf of the plaintiff, and being of lawful age, being examined by M'r Stanton, of counsel for plaintiff, says:

Direct examination:

Q. Where do you live?
A. On East 7th street, between I & K.
Q. How long have you lived there?
A. 14 years.
Q. What do you know, if anything, concerning the two squares of land between H & K north, and 8th and 9th east?
110 A. I know when M'r Peugh had them fenced in.
Q. When was that?
A. I can't tell so particularly; it was '55 or '65.
Q. Do you mean '65?
A. Yes, sir.
Q. What is your native country and your native language?
A. Low Dutch.
Q. When you say '65, do you mean——
A. (The witness interrupting.) No; I mean the year after '55.
Q. How long did the fence stand there?
A. It stood there until '61, when the soldiers came and took them away.
Q. Were or were not the squares cultivated?
A. They was used since they was fenced up; planted in.
Q. How were the squares used?
111 A. Sometimes with oats and sometimes corn.
Q. Up to what time?
A. Up till '61, when the soldiers came and ruined the fence; burned it up and took it away.
Q. By whom were the squares used?
A. By M'r Peugh.
Q. Did you ever do anything in regard to the fences?
A. No; M'r Peugh told us we should watch a little, and if we see anything wrong we should let him know.
(Objected to.)
Q. Was there at any time anything wrong within the fences?
(Objected to as leading.)

A. If anything was loose on it M'r Peugh attended to it, and kept it in good order.

Q. Were you hired by M'r Peugh to look after the fences?

A. Yes, sir; he paid us for it.

(Objected to.)

112 Q. Do you know anything about the price of the land in that neighborhood about the years 1855, 1857, & 1858; and if so, from what is your knowledge derived?

A. We bought our lands in three different times.

Q. In what years?

A. I don't know when we bought the first so particular; I believe it was '54.

Q. When did you buy the last?

A. '61.

Q. When did you buy the second, if you can remember from the recollection of the other dates?

A. It was a couple of years after we bought the first.

Q. What price did you pay?

A. The first time we paid 3 cents a foot; the second time, 4; the last time, 5.

113 And the witness being further examined by Mr. Davidge, of counsel for defendant, says:

Cross-examination:

Q. How much ground did you buy the first time?

A. We bought 30 feet and 1 inch on 7th street, and it runs to 8th street.

Q. From whom did you buy it?

A. From M'r Joachin.

Q. How much did you buy the second time?

A. We bought 34 feet 3 inches on 8th street, and it runs up to the middle of the square.

Q. From whom did you buy?

A. From M'r Joachin.

Q. How much did you buy the third time?

A. I couldn't tell you that so particular; it runs on I and 8th streets, I believe; it is about 124 on I street, and 90 on 8th street.

114 Q. From whom did you buy that?

A. From M'r Joachin.

Q. How much did M'r Peugh pay you and your husband for looking after the fences?

A. That is something I can't tell; he pays in different times.

Q. When did he first hire you to look after the fences?

A. From the first beginning, when he first had the squares fenced up.

Q. How long has your husband been a gard'ner?

A. From '61.

Q. Before that time what business did he carry on in that neighborhood?

A. Rope-making.

Q. How long did he carry it on?

A. I can't tell that so particular; I think he attended to it for

115 about 12 years; most of the time in that neighborhood.

Q. How many years before '61 did he carry on the rope-making business in that neighborhood?

A. About 10 or 12 years.

Q. When he first began to carry on the rope-making business in that neighborhood where did he live?

A. He lived at M'r's Pierce's; he rented a house right there, the side of the railroad.

Q. Do you mean to say that these squares were in oats and corn every year up to 1861?

A. Yes, sir.

Q. Were both generally put in the same crop, or would one be in one crop and the other in another?

A. Sometimes it was different; sometimes it was all the same.

Q. But there was no season when a crop either of oats or corn
116 was not raised on both of these squares, was there?

A. No, sir; it was planted in all the time.

Q. And that continued up to 1861, did it not?

A. Yes, sir.

Q. Were crops growing on these squares when soldiers tore the fences away?

A. The crops had been taken out; it was in the fall when the soldiers came.

Q. In the fall of what year did the soldiers go there?

A. '61.

Q. Then in the summer of '61 a crop of oats or corn had been raised on each of those squares?

A. Yes, sir.

Q. Have you had any conversation with M'r Peugh about this case?

A. No, sir.

Q. When did he ask you to come here and testify?
117 A. This evening about 4 o'clock.

Q. Did he tell you what he wanted you to testify about?

A. No, sir; he only asked me if I knew when the soldiers took the fences away.

Q. Did he come here with you?

A. No, sir; I been with my husband and M'r Joachin.

Q. When did you last see him before this afternoon at 4 o'clock?

A. I believe it was last spring one Sunday morning. I didn't see him since.

Q. Was your husband present when Peugh talked to you this afternoon?

A. No, sir.

Q. He didn't ask you about crops, did he?

A. No.

Q. Are you perfectly certain that crops were raised every season on those squares as you have testified?
118 A. Yes, sir.

Q. After this afternoon had you any conversation with M'r Peugh about this case before you took the stand to testify?

A. No, sir; I was standing out here when M'r Peugh came to us. He didn't say nothing about this to us.

Q. How long were you standing out there in company with M'r Peugh?

A. About five minutes.

Q. And you didn't talk about this case, did you?

A. No, sir.

Q. Did you and your husband talk about this case on your way up here?

A. No, sir.

Q. Did you and your husband talk about the case since you saw Peugh this afternoon at 4 o'clock?

A. No, sir.

119 Q. Did you tell your husband what Peugh asked you, or did your husband tell you what Peugh asked him?

A. No, sir.

DOROTHE DREHER.

Subscribed and sworn to before me this 11th day of October, A. D. 1860.

R. D. MUSSEY,
Examiner.

And there being no other witnesses present, the further examination of witnesses on behalf of the plaintiff was postponed until Monday, the 18th inst., at 7 o'clock p. m., at the same place.

And thereupon, at 9 o'clock p. m., adjourned.

MONDAY, *October 18th*, 1860

Met pursuant to adjournment. Present as heretofore; but there being no witnesses present for the plaintiff, the further examination of
120 witnesses on behalf of the plaintiff was, at the request of the counsel for plaintiff, postponed until Thursday, the 21st inst., at 7 o'clock p. m., at the same place.

And thereupon adjourned.

THURSDAY, *October 21st*, 1860.

Met pursuant to adjournment. Present as heretofore. There being no witnesses present on behalf of the plaintiff, the further examination of witnesses on behalf of the plaintiff was postponed at the request of the plaintiff's counsel until Tuesday, the 26th inst., at 7 o'clock p. m., at the same place.

And thereupon adjourned.

TUESDAY, *October 26th*, 1860.

Met pursuant to adjournment. M'r E. L. Stanton appeared for the plaintiff; Mess'rs Davidge & Norris appeared for the defendant.

121 BUCKNER BAYLISS, a witness produced, sworn, and examined on behalf of the plaintiff, a resident of this city, about 63 years of age, and engaged in real-estate operations, being examined by M'r Stanton, of counsel for plaintiff, says:

Direct examination:

Q. M'r Bayliss, will you please state whether you formerly owned squares 910 and 911 in this city?

A. Yes, sir; I did.

Q. Will you please state whether or not you sold those squares; and, if so, at what time?

A. I did, in May, 1855.

Q. To whom?

A. To M'r Peugh, the complainant in this cause.

Q. For what price?

A. I think it was very nearly two cents and a half a foot. I
122 can explain, if you will let me. I think it was within a fraction of 2½ cents. I sold them to M'r Peugh for $4,673.00. I gave him a deed for the two squares. The consideration of the deed was ten dollars.

(Objected to by M'r Stanton.)

The deed will show for itself. I then added to the purchase-money $2,000 in money, which made the amount, I think, $6,673.00. I took a deed of trust to secure that amount on part of lot 2, in square 429, on a house down there, and made notes including the cash payment and the purchase-money. The first note was for $2,000, payable in one year. The balance of the sum was divided up into 4 notes of $1,100 and some odd dollars each, of 18, 20, 22, & 24 months, which made five notes.

123 Now, to get exactly at the price he paid, deduct the $2,000 from that amount, and you will have what these two squares cost. That amount, I think, was very near 2½ cents a foot. The deed of trust will show; it was all put on this property.

Q. Where was this property on which you state that you took the deed of trust from Peugh to secure the payment of the notes for the $4,673 $\frac{}{100}$ for the squares and the $2,000 loaned?

A. It was in square 429, part of lot 2, immediately north of the Patent Office, on G street between 7th & 8th. It was improved with a house on it, a 3-story house, I think. I considered it good security for that debt.

And the witness being further examined by M'r Davidge, of counsel, for defendant, says:

Cross-examination:

124 Q. Do you recollect the crisis of 1857, and the effect produced thereby *thereby* upon real estate in the city of Washington?

(Objected to on account of the form of the question, and also as not being suggested by anything in the direct examination.)

A. It had an effect upon proper*e*rty; I don't know to what extent.

Q. State to the best of your belief the effect of this crisis upon outlying speculative property not improved.

(Objected to.)

A. Well, I think it had an effect upon all property to a certain extent. Persons that held property would not sell and held on, and it had an effect on some who were compelled to sell and force it into market. I don't know just what effect that would have. You could not sell then as readily as before.

125 Q. Was the $2,000 which you say was added to the purchase-money of these squares, and secured by the deed of trust, due by you to Peugh, the complainant, or was it money advanced by you to him in the sale of the square in question?

A. It was money advanced, of course.

Q. From whom did you buy these squares?

A. I think that I bought them from Carroll Brent, who represented the Young heirs, and from the Van Nesses. They were connected together in some way.

Q. What title did the Van Nesses represent?

A. I think, according to my recollection, the Van Ness was a tax-title, and the Youngs was an original title.

Q. What did you pay the Young heirs?

126 A. I don't recollect.

Q. What did you pay the Van Ness heirs?

A. I don't recollect. You will have to go to the deeds to find that. I have no recollection what it was.

Q. When did you buy from the Young heirs and the Van Ness people?

A. I will answer that by referring to the record-office, which will show. I don't recollect.

Q. About how many years before you sold to Pough? [illegible] down as near as you can.

A. I can't recollect; the only way you can get at that, I refer you to the Land Office, the records of which will show you.

Q. To the best of your recollection was it 3 years before you sold to Pough?

A. I can't state any particular time. I can only refer you to the record?

Q. Did you pay the most to the Young heirs or the Van Ness people?

127 A. Don't recollect.

Q. Tell me whether the whole amount you paid the Van Ness people for the tax-title was not the amount expended by them in the tax-purchase together with taxes and interest, and a small, if any, bonus?

(Objected to because the witness had not stated positively that he purchased from the Van Ness people, but testified that he had purchased from the Young heirs.)

A. I don't recollect what amount, and I am not positive whether I bought from the Van Ness heirs or not. But I am positive that I bought from the Young heirs. I think there were tax-titles out in the Van Ness heirs, but I relied on the purchase from the Young heirs.

Q. Was the only title you purchased the Young title?

A. I can't say positive how it was. I can only refer you to the

128 deeds on record, that I know that I purchased from Young heirs.

Q. Then the records, I understand, will show from whom you made the purchase?

A. Yes, sir; that is the best evidence; according to recollection on the record.

Q. And what you paid?

A. Yes; that will show what I paid.

And the witness being further examined by M'r Stanton, of counsel for plaintiff, says:

Redirect examination:

Q. This effect upon real-estate transactions in 1857, such as it was, was it noticeable in respect to the number of transactions or to the influence on prices?

A. Well, all I can say about that is that you couldn't sell property so freely as you did before this took place. It was a great deal as it is now. My idea is that it took effect only on persons that was compelled

129 to sell; persons that had the property and couldn't hold on to it.

(M'r Davidge objects to the witness' "ideas."

And the witness being further examined by M'r Norris, of counsel for defendant, says:

Recross-examination:

Q. When it was sold, would it bring the same price it would two or three years before?

A. That would depend altogether upon the purchaser and the man that wanted to buy.

On reading the above to the witness prior to his signature, he said:

Now you have brought to my mind that M'r C. H. Wiltberger had a tax-title on those two squares and we didn't consider his title worth

anything. I think M'r Bradley gave M'r Peugh a written opinion that it wasn't good for anything.

B. BAYLISS.

Subscribed and sworn to before me this 26th day of October, A. D. 1869.

R. D. MUSSEY,
Examiner.

130 There being no other witness present, the further examination of witnesses on behalf of the plaintiff was postponed until Monday, the 1st day of November, prox., at the same place at 7 o'clock p. m. And thereupon, at 8 o'clock p. m., adjourned.

MONDAY, *November* 1st, 1869.

By consent, the further examination of witnesses on behalf of the plaintiff was postponed until after the close of the present term of the court in banc.

I certify that the foregoing depositions were all taken by me at the times, and places, specified, reduced to writing by me in the pres-
131 ence of the several witnesses and by them, after being read over to them or by them, respectively signed; and that before taking said depositions each witness was first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter whereof he should be examined; that I am not of counsel nor attorney for either of the parties to said cause, nor in any way interested in the event thereof; and that my fee for taking the same, amounting to $35, has been paid to me by the plaintiff.

Given under my hand and seal, at Washington, D. C., this 29th day of July, 1872.

R. D. MUSSEY,
Examiner in Equity, Supreme C't, D. C.

132 *Testimony for compl't.—Filed Aug.* 21, 1874.

In the supreme court of the District of Columbia.—April 29, 1872.

SAMUEL L. PEUGH
vs.
HENRY S. DAVIS. } Equity, 1713. Docket 9.

It is agreed that testimony of the plaintiff in this cause may be taken by A. S. Worthington, examiner in chancery, in short-hand, the depositions to be afterwards written out and read over in the presence of the respective witnesses and of counsel on either side, before being signed.

It is further agreed that the certificate of William H. Philip, hereto appended, dated April 26, 1872, shall be returned by said examiner into court and shall be taken to be the deposition on behalf of the plaintiff of said Philip, subject, however, to all just exceptions as to its admissibility.

W. D. DAVIDGE,
For Def't.
E. L. STANTON,
For Compl't.

133 I certify that the following is an exact copy from a memorandum-book (real estate) belonging to me and now in my possession, under the head of "Tax paid, &c., on real estate."

"Square 910; all; C. H. Williams; out of taxes & equ's, $[illegible] am't for which property was sold, $[illegible]."

Opposite to this is the following entry:

"Tax paid me by M'r Peugh; delivered the certificate to him."

The actual amount paid by M'r Peugh I have no means of knowing, and have no recollection of at this time.

The M'r Peugh who made this purchase, and by whom the money was paid, is M'r Samuel A. Peugh, the complainant in suit of Peugh against H. S. Davis.

This is the only transaction I have had with M'r Peugh, to the best of my recollection, and I have no recollection of any other
134 transaction in respect to this property.

WILLIAM H. PHILIP.

WASHINGTON, D. C., *April* 26, 1872.

MONDAY, *April* 29, 1872.

Met, by consent, at office of R. L. Stanton, 612 F street, Washington, D. C.

Present, M'r Stanton, counsel for the plaintiff, and Mess'rs Davidge and John E. Norris, counsel for the defendant.

No witnesses being in attendance, adjourned to meet at the same place on Friday, the 3d of May, 1872, at three o'clock p. m.

A. S. WORTHINGTON,
Examiner.

FRIDAY, *May* 3d, 1872.

Met, pursuant to adjournment, at three o'clock p. m.

135 M'r R. L. Stanton appeared for the plaintiff, and M'r John E. Norris appeared for the defendant.

M'r Stanton proposes to proceed with the examination of witnesses for the plaintiff.

M'r Norris objects, and reduces his objection to writing, and the same is hereto appended, marked "Exhibit J. E. N."

EXHIBIT, J. E. N.

PEUGH vs. DAVIS. } Equity No.

The defendant, by his counsel, objects to proceed in taking testimony in this cause until the papers and testimony formerly taken shall be produced for the inspection of counsel, a long period having elapsed since the last evidence was given, to wit, over twelve months, and it is necessary to the ends of justice that the defendant and his counsel should have said papers and testimony for inspection.

May 3d, 1872.

JOHN E. NORRIS,
Of Counsel for Def't.

136 Counsel for complainant states that sufficient notice of this objection has not been given so as to enable him to have the papers referred to present at this examination; that sufficient time has elapsed

since the last examination for notice to be given to him of such objection or requirement; and that, witnesses now being present, counsel for complainant will proceed with their examination.

Counsel for defendant says that sufficient notice was given at the last sitting that the papers and the testimony would be necessary for him to proceed, and that although a long time has elapsed since the taking of testimony, no default has been with the defendant, for that he paid for the taking of his depositions to the examiner, and the plaintiff
137 has been in default, and the said testimony and papers are withheld by the examiner by reason of his not paying the fees required by the examiner.

Counsel for complainant recollects that at the last sitting something was said regarding the papers, but does not recollect that counsel for defendant insisted upon their production at this meeting as a prerequisite to proceeding with the examination of witnesses. Counsel for complainant also understands, from the examiner who took the former testimony in this case, that the difficulty in getting at the papers is that he cannot open his safe in which they are deposited.

JAMES CALLEN, a witness produced, sworn, and examined on behalf of the plaintiff, being examined by Mr. Stanton, of counsel for the plaintiff, says:

138 A. My name is James N. Callan; I am thirty-five years of age; I reside in Washington, D. C., and have resided here all my life; I am a real-estate agent.

(Counsel for defendant renews his objection to taking testimony at this time.

Counsel for plaintiff, before proceeding further with the examination of this witness, offers to go on with the direct examination of Mr. Callan, and to allow counsel for the defendant opportunity hereafter, when they shall have examined all such papers as they desire, to cross-examine him; but the witness being now in attendance, and the complainant himself desiring to secure the benefit of his testimony, counsel for
139 complainant does not feel at liberty to defer the taking of his testimony-in-chief.)

M'r NORRIS. Then we will retire.

(Counsel for complainant requests M'r Norris to indicate a convenient time for the taking of further testimony, desiring counsel to indicate as early a day as practicable.

Counsel for defendant objects to testimony being taken at this time, or at any other time, until the said papers and testimony heretofore mentioned in his objection entered are produced, and when such papers and testimony are produced it will be convenient for him to proceed. And counsel further states that he is willing to agree to an order with counsel for the plaintiff on to-morrow, the 4th of May, to take testimony, and immediately thereafter to proceed with taking testimony.

140 Counsel for complainant will unite with counsel for defendant in application for such order from the court to-morrow, and notifies counsel for defendant that he will at the same time ask for such sanction as may be needed for the taking now of the further testimony-in-chief of M'r Callan, subject to the provision above indicated, that counsel for defendant shall hereafter have suitable opportunity to cross-examine him.)

M'r Norris retires.

M'r Stanton proceeds to examine the witness.

Q. I will ask you, M'r Callan, if you were engaged in the purchase of

real estate in the neighborhood of squares 910 and 911, in this city, in the early part of the year 1858, and whether you know the value
141 of such property at that time and in the year 1857?

A. I was engaged in the purchase of real estate at that time in this city; purchased two squares immediately north of 910 from Mr Peugh in the early part of 1858. Property at that time was worth from 6 to 8 cents per square foot in that neighborhood. That on H street, in square 911, was worth ten cents per foot.

Q. State, if you please, what was the relative value of the squares which you purchased as compared with squares 910 and 911, and give the numbers of the squares that you purchased and the rate for which you purchased them.

A. I believe square 911 to have been far more valuable than those I purchased. Square 910 was not so valuable as 911, but was worth more than those I purchased. Square 910 fronts on K street, one of
142 the nicest streets in the city. The square 909, that I purchased, was intersected diagonally by the Baltimore and Ohio Railroad, and its value depreciated on that account. The other square that I purchased was a small triangular square on the Boundary, north and east of squares 910 and 911. I paid a little over five cents a foot. I purchased both squares in one purchase, and got them at a little less because of the railroad running through them. In 1859 I sold those two squares (that I had purchased from M'r Peugh) for about $5,000—I mean squares 909 and the square north of square 931.

Q. About the time above indicated did you make any offer to Mr Peugh for the purchase of squares 910 and 911? and, if you did, state the amount you offered him.

143 A. I offered him 6½ cents per foot; that amounted to about $5,000 for square 911. I don't recollect the amount of the offer for square 910, but my offer was at the rate of 6½ cents per foot for the ground in both.

Q. What response did M'r Peugh make to your offer?

A. He told me he did not care about parting with the ground at that time, as property was increasing in value. M'r Peugh lived right in the neighborhood.

Direct examination of witness closed.

Adjourned to meet at such time as may be hereafter fixed upon.

JAMES N. CALLAN.

Sworn and subscribed to before me this 12th day of June, 1872.

A. S. WORTHINGTON,
U. S. Commissioner.

144 632 F STREET, WASHINGTON, D. C.,
Monday, August 12, 1872—12 m.

Met in accordance with notice, copy of which is subjoined.

In the supreme court of the District of Columbia.

PEUGH
vs.
DAVIS.

Messrs. Davidge & Norris, solicitors for defendants:

Please take notice that at 12 o'clock m. on Monday, August 12th 1872, the taking of testimony in behalf of complainant will be resumed

before A. S. Worthington, esq., examiner in chancery, at the office of the latter, No. 632 F street.

E. L. STANTON,
Solicitor for Complainant.

I served a copy of the foregoing notice on John E. Norris, esq.,
145 one of the solicitors for defendant, at his office, at about a quarter past eleven o'clock on Saturday, August 10th, 1872.

E. L. STANTON.

Subscribed and sworn to before me this 10th day of August, 1872.

A. S. WORTHINGTON,
U. S. Com. for D. of C.

Present, the plaintiff and the defendant; M'r Norris, of counsel for defendant, and M'r Stanton, counsel for plaintiff.

M'r Stanton states that the pleading and previous testimony in the case are now in the hands of the present examiner, and produces the witness, James N. Callan, examined at the last session of the commission, and tenders him to counsel for defendant for cross-examination.

146 M'r Callan, being cross-examined by M'r Norris, testifies as follows:

Q. State to what extent you were engaged in the purchase of real estate in the neighborhood of squares 910 and 911, in this city, in the years 1857 and 1858.

A. I purchased two squares to the north of them from Mr. Peugh.

Q. Between what streets running east and west, and what streets running north and south, do the squares you purchased lie?

A. One of them is between K and L and 8th and 9th; the other is on the Boundary, between what streets I do not know; it was just where the cars strike the city.

Q. Were there any improvements on either of those squares?

A. No, sir. The Baltimore and Ohio Railroad passed through them both.

Q. Was this a bona-fide purchase?

147 A. Yes, sir. I received deeds for the land, which are recorded. Square 909, I think, now stands in the name of Potts and Shelly; it was in the hands of a man named Masters. The other square, I think, is in the name of Mangan.

Q. What did you pay per square foot?

A. In the neighborhood of five or six cents; nearer five than six.

Q. Did you purchase in the lump, without reference to the square feet?

A. I do not know that I can positively say; I valued it at about five cents per foot.

Q. Have you stated in your testimony-in-chief what amount you got for those two squares?

A. I do not recollect what I got for one of the squares, but I got $5,000 in trade for the other one.

Q. Have you not in your examination-in-chief stated that in
148 1859 you sold those two squares for about $5,000?

A. It was in the neighborhood of that. I sold one of them very cheap.

Q. Have you not, in your examination-in-chief, stated that in 1859 you sold those two squares for about $5,000?

A. I have stated in my examination-in-chief, as I do now, that I sold them for about $5,000. My impression is that it was not over $5,000.

Q. State what your terms of sale were when you purchased of Peugh, and your terms of sale when you sold.

A. I paid $1,000 cash, the balance on time. When I sold, I got a house on 10th street—No. 414 10th street—northwest at present.

Q. On what time did you take the notes?

149 A. My impression is one and two years.

Q. Did you execute notes for the balance of the payments?

A. I cannot remember.

Q. Are you sure that you did not give notes and execute a deed of trust?

A. My impression is I gave no deed of trust; I may have executed notes.

Q. Can you state whether any one else had an interest in the squares of ground 909 and north of 931?

A. Yes, sir; my father had about a one-half interest.

Q. Did your father join in the deed?

A. No, sir; the transaction appeared to be wholly mine.

Q. My question is whether anybody else had an interest in the two squares last mentioned when M'r Peugh sold them to you?

A. Not to my knowledge, at that time.

150 Q. Did your father claim an interest in those squares?

A. No, sir; I never heard him claim any interest previous to the purchase.

Q. When you sold them did he join in the conveyance?

A. No, sir.

Q. Was the conveyance made to you individually?

A. Yes, sir.

Redirect by M'r Stanton:

Q. Do you remember the number of square feet contained respectively in squares 910 and 911?

A. No, sir.

Examination of the witness closed.

Adjourned to meet at one o'clock on Wednesday, the 14th of August, 1872, at same place.

JAMES N. CALLAN.

Sworn and subscribed to before me this 23d of June, 1873.

A. S. WORTHINGTON,
Examiner.

151 WEDNESDAY, *August* 14, 1872.

Met pursuant to adjournment. Present, plaintiff and defendant, and M'r Stanton, counsel for plaintiff, and M'r Morris, counsel for defendant.

SOPHIA MYERS, a witness produced, sworn, and examined on behalf of the plaintiff, in answer to interrogatories propounded to her, deposes as follows:

Examined by M'r Stanton:

My name is Sophia Myers. I reside on I street northeast, between 7th & 8th, in this city. I am 52 years of age.

Q. Do you remember the number of the square you live on?

A. I do not remember it. I have heard it often enough, but have forgotten it.

Q. How long have you lived there?

A. It will be thirteen years next Christmas.

152 Q. Do you know the two squares of ground between H & K and 8th and 9th streets?

A. Yes, sir. From H to I and from I to K, between 8th and 9th. I know them.

Q. Do you remember who was in possession of these two squares when you moved to your present residence; and, if so, who?

A. I know nobody else except M'r Peugh—that he fixed up the fence and repaired it when it was broke. I picked up plank belonging to the fence and told M'r Peugh that he should send somebody to get it, and afterwards a colored man came and put it up. The first year of the war M'r Peugh told some man there not to break his fence. There was a quarrel about it, and they jawed me, and I told them I did not know
153 who it was told M'r Peugh. Then M'r Peugh went and told them it was not me that told him.

(M'r Norris objects to so much as refers to conversation between the witness and M'r Peugh and other parties in relation to this property.)

Q. Do you remember when the war broke out?

A. Yes.

Q. Who had it then?

A. M'r Peugh had it then so far as I know. He always repaired it at that time.

Q. How long did his possession continue in this way—in the repairing of fences, &c.?

A. I can't say exactly. The soldiers broke the whole fence down, and then there was no more repairing. The soldiers used the boards in their tents.

Q. Do you remember anything about the squares afterward being used for a wood-yard by the government?

154 A. Yes; the government had wood lying on the square between I & K.

Cross-examination by M'r Norris:

Q. You have only been there about twelve years?

A. It is going now on thirteen years.

Q. You were not there in '57, '8, and '9?

A. I don't know what year I moved there, but I know it is going on thirteen years.

Q. Do you state that you don't know on what square you live—the number?

A. No, sir; I bought my lot from old man Joachin.

Q. When did you first become acquainted with M'r Peugh?

A. I saw him walking around there; I can't say exactly when; and he did not live far from there.

Q. Do you know where he lives now?

155 A. No, sir. I never was in the house myself. He lived there on the Boundary, between 6th and 7th. He lived there in the first beginning of the war. I am sure of that. I know he was in the camp the next morning when the soldiers burned the boards.

Q. And you cannot tell when you first became acquainted with him?

A. No, I can't say exactly, because we have not got much acquainted.

Q. When did you see M'r Peugh last before to-day?

A. I think it was last Monday, in the Northern Liberty Market. He bought vegetables from me.

Q. Did you have any conversation with him at that time?

A. He only asked me when he called me for a witness if I was willing to go. I said, "Yes, I will tell what I know about it."

156 Q. Did you tell him then what you knew about it?

A. I only told him—we did not talk [illegible] what I knew about it. That was all that passed between us.

Q. Did M'r Peugh ask you what you knew about it?

A. No. He only says, "Will you go as witness for me about those squares?" and I told him yes, I would go any time. He did not ask me what I should say or anything about it. Nobody else asked me anything about it.

Q. Did not M'r Peugh ask you if you could prove so and so?

A. No, sir.

Q. Then I understand you to say that he merely asked you to be a witness for him?

A. He merely asked me if I would go as a witness when called for, and I told him yes.

157 Q. Did not he ask you how long you had been living there?

A. No, sir.

Q. Did not he ask you if you saw the soldiers burn the boards?

A. I guess not.

Q. Did not he ask you if you saw the soldiers burn the boards?

A. I think he did not. I have been bothered right smart this week, and I think he did not.

Q. Did he ask you if you had ever seen him walk around these squares or any one of them at the time that the soldiers were there and were burning these boards?

A. No, sir, he did not ask me that question.

Q. Do you know when the war broke out and when the soldiers were encamped about those squares or either of them?

158 A. I can't remember; it was at the first beginning of the war. If I had known I was going to be witness I would have looked into the matter more particularly.

Q. Did you ever see M'r Peugh after the time of the burning of these boards before you saw him in market the other day?

A. Oh, yes; I seen him sometimes; I seen him already with his wife in the carriage. Sometimes he would buy vegitables from me in the market.

Q. I understand you to say that he never spoke to you in relation to these squares except on the time referred to here a few days ago?

A. Yes.

Examination closed.

Adjourned to meet at such time and place as may hereafter be agreed upon.

her
SOPHIA + MYERS.
mark.

159 Sworn and subscribed to (by touching the pen while the examiner wrote the name and mark) before me this 23d day of June, 1873.

A. S. WORTHINGTON,
Examiner.

THURSDAY, *September* 24, 1873.

Met, by consent, at same place.

Present, M'r Stanton for the plaintiff and M'r Norris for the defendant.

RICHARD A. HILL, a witness produced, sworn and examined on behalf of the plaintiff, deposes as follows:

Examined by M'r Stanton:

My name is Richard A. Hill; my age is fifty-one years; I am a plumber and gas-fitter by trade, and reside on P street, between 16th and 17th, in this city.

Q. How long have you resided here?

A. Since 1844, I have lived here or in the vicinity. In Mont-
160 gomery County, Maryland, two years of the time; three years at Little Falls, Virginia; all the rest of the time in Washington. My family lived here all the time.

Q. Since what year have you resided here continuously?

A. Since 1856—St. Patrick's day.

Q. Do you know the parties to this suit; and, if so, how long have you known them?

A. I have known both M'r Peugh and M'r Davis about the same length of time. I think I got acquainted with M'r Peugh first. Have known them both a long time.

Q. For about how many years?

A. About thirty years, I should think.

Q. Now, I will ask you whether you ever heard, after the year 1858, any conversation between M'r Davis and M'r Peugh respecting an indebtedness claimed to be due from M'r Peugh to M'r Davis. If
161 you do, state the time, place, and circumstances of the conversation, and of what the conversation consisted, as near as you can remember.

(Objected to for the reason that there is in this case no question of indebtedness between the plaintiff and defendant.)

A. In 1862, in the fall, I and M'r Peugh were at the corner of 14th street and Pennsylvania avenue, when M'r Davis came by and hailed M'r Peugh about two thousand dollars, and when he hailed him I went off a short distance. M'r Davis said, "I want that two thousand dollars." Says he, "I shall charge you two and a half per cent. a month for it, and if you pay that I will give you a deed." M'r Peugh remarked that he had not the money when M'r Davis first asked him.

Q. Did M'r Peugh say anything as to the time or possibility
162 of making payment?

A. No, sir; not to my recollection. He said he had not the money then.

(Answer objected to as not responsive to the question.)

Examination-in-chief closed.

Cross-examination by M'r Norris:

Q. What two years did you reside in Montgomery County?

A. I think we were burnt out in 1856, and we went out to Montgomery County two years before that.

Q. Were you living in Washington at the time you state the conversation you heard at the corner of 14th street and Pennsylvania avenue?

A. Yes, sir; I think I was. I lived in the country but a very short time in the winter time.

Q. In that conversation was anything said about the subject-matter of the debt of $2,000?

163 A. I did not hear anything of that kind.

Q. Have you stated all that you heard in that conversation; if not, state what other remarks was made by either party?

A. I don't recollect of hearing any other. The conversation was very short.

Q. How is it that you recollect the subject-matter of that conversation at this time?

A. Well, we have talked over the matter several times—M'r Peugh and myself.

Q. Where and when and under what circumstances have you talked it over, and for what reason; can you state?

I don't know as there is any reason; we have not talked about it frequently, but only twice, I think. M'r Peugh was selling about his
164 lots out on H street. I would sometimes have work out there to do at his house. In that way the conversation would come up about the lots. I would ask him the value of the lots and one thing and another.

Q. Did he ever speak to you about any squares he had out there? When and where, and what squares did he name?

A. I walked over the squares with him many a time. He has spoken to me about the squares. It was on the squares about two years ago. We went down with M'r Peugh to a little house on one of the squares. I don't know the number of the houses. They are both near the Baltimore and Ohio Railroad. One lies close to the railroad, near his house, and west of it; the other lies on a parallel line due west of M'r Peugh's, right on the line of the road that leads to his house.

165 (Answer objected to as irresponsive, and question repeated.)

Witness continuing says: M'r Peugh has spoken to me about squares he had out there. He has spoken to me at his house about it, and on the squares themselves. This was about ten years ago. It was before the war, I know.

Q. What did he say about those squares?

A. He told me they were his squares, and I always understood they were his.

Q. Did he ever tell you he had sold them to anybody; and if so, to whom?

A. He ever told me he had sold them to anybody.

Q. Did he ever tell you there was any indebtedness on them; and, if so, to whom and to what amount?

A. After M'r Davis asked him for this money, then the subject
166 came up about this matter, and we had a talk about it. He never told me about anybody having any claim on the property, except what I have said, that M'r Davis asked him for two thousand dollars.

Q. Do you mean to say that M'r Davis asked him for the two thousand dollars on those squares of ground?

A. He did not say squares of ground to me. I mean M'r Davis never did.

Q. In your testimony, as delivered, you say M'r Peugh said he had some lots out there?

A. M'r Peugh never said to me he had any lots out there.

Q. Do you swear here that you have not said in your testimony to-day that M'r Peugh said he had some lots out there?

A. I tell you just what I did say; you will find it in my answer. I said he would talk about lots out about town—about the
167 value of them out *out* about there.

(Answer objected to and question repeated.)

He did not tell me he had any lots out there.

Q. Question repeated.

A. I say just what I said at first, that M'r Norris asked me how we came to talk about squares, and I told him M'r Peugh and I were talking about the value of lots out there.

Q. Then you refuse to answer the question twice repeated, whether M'r Peugh said that he had some lots out there, according to your own statement before made?

A. I say what I said at first. M'r Norris asked me how we came to come into conversation about the squares, and I told him we were talking about the value of squares.

168 Q. When had you the last conversation, and where, respecting these squares of ground with M'r Peugh, and under what circumstances?

A. I don't recollect the date. He has talked with me about it once or twice since this law-suit has been on hand. I have been summoned once or twice; at least he told me the trial was coming off.

Q. Question repeated.

A. He had a conversation with me about it this morning. I met him on the street this morning, and he told me he wanted me to come down here this morning. I met him on G street, between 13th and 14th. It was about twenty-five minutes to twelve, and he told me he wanted me at twelve o'clock. I told him I was in a hurry, and that I would go up to Gleason's and come right back.

169 Q. Were you summoned to appear here by any process?

A. No, sir.

Q. Did you tell M'r Peugh what you knew about it, or did he ask you what you knew about the squares of ground?

A. He never asked me anything about what I knew about the squares of ground. I did not know who he bought them from, and did not know anything about them.

Q. Did he ask you what you could testify to, or did you tell him?

A. No, sir. He did not ask me, and I did not tell him. He asked me about what had occurred, of course, and I told him I would tell him what I knew.

Q. Did you know when you came here on what subjects you would be interrogated?

A. No, sir; it would be a hard matter for me to tell what you

170 were going to ask me.

Q. Did you know what you were to testify to?

A. I did.

Q. What was it you were to testify to?

A. It was to testify to what I heard M'r Davis say.

Q. Do you swear that you did not add "and nothing more" to that answer?

A. I don't recollect if I did. I don't know whether I said anything afterwards or not.

Q. Had you ever any conversation between the time first named, to wit, about ten or twelve years ago and within the past week, with M'r Peugh in relation to the property in question and the matter of dispute between him and M'r Davis?

A. No, sir; I have had, as I said before; he told me about this

171 law-suit, and that the trial was coming up this morning. He spoke about the suit once or twice before.

Q. When and where before this morning did he speak to you about the suit?

A. On the street, I think; I can't tell exactly where. I cannot tell when.

Q. You say that you heard a conversation [illegible] corner of 14th street and Pennsylvania avenue between M'r Peugh and M'r Davis. How is it that you recollect of that conversation at this time?

A. Well, as I stated before, the matter has been talked over once or twice and this trial has been to come off once or twice, and of course it has been refreshing to my memory.

172 Q. Do you mean to say that your recollection was not prompted in any other way than that stated in this answer?

A. No, sir; there is another one. The reason is this: when I heard M'r Davis make that remark to M'r Peugh I did not think that he had the money; I looked upon him as a wealthy man. The matter struck me because I thought he was a wealthier man than M'r Davis was.

Redirect examination:

Q. Are the squares which M'r Peugh represented as belonging to him, and concerning which you testify in your cross-examination, located on H street, or in that vicinity, and are they in the neighborhood of the house formerly occupied by M'r Peugh?

(Question objected to by solicitor for the defendant on the
173 ground that he has not named any squares, and that M'r Peugh might assume to own any squares in that portion of the city.)

A. One of the squares lies west of his house and the other south of it; one near H street, in front of the railroad.

Q. The examiner's notes in the early part of your cross-examination contain this expression: "M'r Peugh was talking about his lots on H street." Is the ground to which you there refer the same as the two squares subsequently mentioned by you as belonging to M'r Peugh?

A. Yes, sir.

Recross-examination:

Q. Did he locate those lots and say where they were?

A. He did not locate any lots to me.

RICHARD A. HILL.

174 Sworn and subscribed to before me on this 23d day of June, 1873.

Adjourned to meet at such time as may be hereafter agreed upon.

A. S. WORTHINGTON,
Examiner.

FRIDAY, *September* 27, 1872.

Met, by consent, at same place.

Present, the plaintiff and the defendant, M'r Stanton, of plaintiff's counsel, and M'r Morris, of defendant's counsel.

GEORGE SIMMS, a witness produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

My name is George Simms. I was born in 1829; am a contractor; reside on Howard University lot in this city.

Examination-in-chief by M'r Stanton:

Q. Do you know the parties to this suit, or either of them?

175 A. I do. I have known M'r Peugh 25 years. Have known M'r Davis about the same length of time. I am a resident of Washington; was born in Washington.

Q. Did you at any time occupy a square of ground in this city between H and I and 8th and 9th streets east? If yes, state time of such occupancy, and the circumstances under which it occu'red.

A. I did, sir; in 1865; the circumstances under which I—it was through M'r Peugh. I went to him and asked him if he could give or rent me a lot to build a house on. Rent was very high; he refused me at first; the second time he told me to go on that square, 8th and 9th, on H street northeast.

(Solicitor for the defendant objects to words being put in the witnesses mouth as to locality or description of property.

176 Counsel for the plaintiff desires the examiner to note that no one has put words in the witness' mouth.

Counsel for defendant avers that the examiner did, apart from language of the question, ask the witness in what part of the city it was, whether "up here or down there."

The examiner, on his own account notes that, finding the witness did not appear to understand the distinction between H street northeast and H street southeast, he pointed to those respective localities and asked the witness which he meant.)

Witness continuing, says: Then I asked him what he would charge me for the rent, and he told me to go ahead and build the house and then to come to him and he would tell me exactly what he would

177 charge for the rent. In the mean time that I was on the lot, about nearly three months, M'r Davis came to my wife and said, "Who gave you liberty to build on this lot?" She replied to him, "M'r Peugh gave my husband liberty to build on this lot."

(This testimony objected to as hearsay.)

Witness, continuing, says: I asked her who was M'r Davis. She said she did not know, but he said if I did not pay the rent to him or move the house he would sell the house for ground-rent. I came home that night. I told her I did not know what to do; then I went to M'r Peugh and asked him how he came to put me on another gentleman's ground. Says he, "I did not do it." He told me to go down there and build

178 on his square. "Well," says I, "I did not get a chance to come and ask you what to pay for rent, and M'r Davis has come and said I should have to pay a dollar and a half for ground-rent or he would sell my house." Then M'r Davis came up in that same week, in the night, with two gentlemen; one was M'r Winder, the name of the other I have forgotten, and drew up an agreement that I was to pay him punctually, and leave the rent—a dollar and a half—with M'r Winder, or else I would have to move. I have the agreement at home; that is all, sir.

(All the conversation between the witness and M'r Peugh in the absence of M'r Davis is objected to, and the evidence in relation to the agreement objected to because it appears that it is in writing and is in existence.)

179 Q. Was or was not the interview with M'r Davis at which M'r Winder and another were present the first interview with M'r Davis which you yourself had?

A. Yes, sir; it was on a Sunday.

Q. Was that the only time when M'r Davis came to you respecting the possession of that square?

A. That was the first time he came to me. He had been to my wife before. He also said M'r Peugh owed him two thousand dollars, which he had loaned him on the two squares.

(Answer objected to by M'r Norris as irrelevant to the question.)

Q. When you went to M'r Peugh respecting the ground which M'r Davis had made to your wife, did or did not M'r Peugh admit that the square belonged to M'r Davis?

A. He did not.

180 (Question objected to.)

Witness, continuing, says: He told me this after I had told him what M'r Davis said. Of course I was a little rumpled up at M'r Peugh, because he had given me liberty, as I thought, to build on his other man's ground, and at this time of year it was impossible for me to get a piece of ground. Says I to M'r Peugh: "I think you are very wrong;" and M'r Peugh said to me: "Don't pay Davis anything for the rent." Then I said: "If I don't M'r Davis will sell my house." Then M'r Peugh could not get me satisfied, and I came to M'r Davis the next week, and paid him. I told him, as I tell you now, that I did not want to know anything about the two thousand dollars; that it was nothing to me.

(Answer objected to by M'r Norris.)

181 Q. How long had you been on the square before M'r Davis came out there?

A. The time he came to see my wife it was just about even up two months; and the time I paid him I had been there within a few days of three months.

Examination-in-chief closed.

Cross-examination by M'r Norris:

Q. How long did you occupy the premises as tenant to M'r Davis?

A. I think it was about twelve months—twelve or thirteen. I have the papers at home to show.

(Counsel for the defendant asks that these papers may be produced.)

Q. You state that it was on Sunday that M'r Davis saw you. Was this agreement drawn up on Sunday?

A. It was not; but I promised him that I would pay him.

Q. When was it executed?

A. In that week, sir.

182 Q. When you left the premises did you remove the building?

A. I did.

(Counsel mutually agree that the witness shall leave the papers referred to with the examiner and identify them. The papers were subsequently handed to the examiner by the witness, and are hereto appended, marked, respectively, Exhibits G. S. Nos. 1, 2, 3, 4, and 5.)

his
GEORGE + SIMMS.
mark.

Sworn and subscribed to before me this 27th day of June, 1873.

A. S. WORTHINGTON,
Examiner.

MARGARET N. SIMMS, a witness produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

My name is Margaret N. Simms; my age is forty-five years; I am the wife of the last witness, and live with him.

183 Being examined in chief by M'r Stanton, she says:

Q. Did you reside with your husband on the square between H and I streets north and 8th and 9th east?

A. Yes, sir; I did.

Q. While you were there did you have any conversation with M'r Henry S. Davis, the defendant in this suit, respecting the ownership of said square? If so, state the circumstances of the same, and as near as you can what was said.

A. The first time I saw M'r Davis he came up in a buggy. I was on the railroad, with my little basket, picking up chips. He asked me who gave me liberty to build on that ground, and I told him M'r Peugh told my husband to do that. He said M'r Peugh had no right to give me *me* liberty to build on this ground. He said he had loaned
184 M'r Peugh two thousand dollars, and did not think he was going to get the ground for it, and said to tell my husband to move off there or pay him the rent. I was frightened. I did not know M'r Davis. That is all at that time. Of course, when my husband came home I stated the case to him as he has stated it to you.

Q. Did you see M'r Davis again?

A. I did.

Q. State the circumstances of the second occasion.

A. He came there at night with two other gentlemen, and this agreement was drawn up. The agreement I have at home in my trunk—that we was to pay him a dollar and a half, according to the agreement.

Q. Did he tell your husband, also, what he had said to you at your interview with him?

185 A. Not that I know of, sir.

Q. With whom did his second interview take place?

A. With me, my husband, two other gentlemen, and M'r Davis.

Q. Was it your husband or yourself with whom this second conversation occur'ed?

A. It was my husband; he was at home at night.

Q. Did he speak of the two thousand dollar loan that night?

(Objected to as leading.)

A. Yes, sir.

Q. What was M'r Davis' manner at those two interviews?

A. Well, when he first came, he came harsh and hurt my feelings. The next time he came at night, and he came like a gentleman. It was quite late, about nine o'clock. We were about going to bed. We did not know they were coming.

186 Q. What day of the week was that second visit?

A. Indeed, I can't tell, but it was in the middle part of the week, according to my best recollection.

Examination-in-chief closed.

Cross-examination by M'r Norris:

Q. Were you present at the conversation when M'r Davis and the two gentlemen called on you?

A. Yes, sir; for we only had one room down-stairs, and we all had to be in it.

Q. Then you could hear all that took place?

A. Yes, sir, if I had listened; but I had the children and was attending to them. The three gentlemen were at the table making out the agreement; of course my husband signed, and I don't know whether I put my hand to the pen or not.

187 Q. Was there anything said at that time about $2,000?

A. Yes, sir.

Q. What was it?

A. M'r Winder and M'r Davis were telling my husband about the $2,000 he had loaned to M'r Peugh, but I was not listening to the particulars of the conversation. I was studying about my house that had to be removed.

Q. You state that when he first came there he was harsh. The harshness you speak of, was it not in this, that he asked you who gave

authority to build a house on that property, and that the property belonged to him?

A. Yes, sir; he was crosser than I think a gentleman ought to appear to a poor woman when he knew I was ignorant whose land it was.

188 Q. Then from that time forward—from the time of that agreement—you and your husband paid rent to M'r Davis till you left?

A. Yes, sir.

Q. Did any one else demand rent during that period?

A. No, sir.

MARGARET SIMMS.

Sworn and subscribed to before me this 27th day of June, 1873.

A. S. WORTHINGTON,
Examiner.

Adjourned to meet at same place at 3 o'clock on Tuesday, October 1, 1872.

A. S. WORTHINGTON,
Examiner.

TUESDAY, *October* 1, 1872.

Met pursuant to adjournment.

Present, plaintiff and defendant; E. L. Stanton, esq., plaintiff's solicitor, and John E. Norris, esq., of defendant's counsel.

189 WILLIAM B. TODD, a witness produced by the plaintiff, being first duly sworn, upon being examined by M'r Stanton, deposes as follows:

I am 62 years of age; reside in Washington City, and know both the parties to this suit. I am not now engaged in any business.

Q. How long have you resided in this city?

A. Nearly 43 years.

Q. During that time have you had opportunity, and if so in what way, to become acquainted with the price of real estate in the city of Washington, especially about the years 1857 and 1858?

A. I have had good opportunity to buy and sell a good deal of real estate in this city about that period.

Q. Your transactions in real estate for a great many years,
190 including the two years just named, have probably been larger than those of any one person, have they not?

A. I think there are probably others that have done as much, perhaps more.

Q. Do the opportunities which you have had enable you to express an opinion as to the value of squares 910 and 911, situated between H and K streets north and 8th and 9th streets east, in this city?

(Question objected to, for reason that the property in question was conveyed by a deed absolute, and the question of valuation cannot be considered in this suit.)

A. I believe I can give an opinion as to the value of real estate in that section.

Q. What do you consider to have been the value per square foot of the ground in those squares at the time indicated?

191 (Question objected to, for the reason above stated.)

A. The square fronting on H street I should think was worth more than the other. Both are about on the grade. I think there was a pavement down on H street in 1858. I should rate that one fronting on H street, 911 I believe, at about five cents a foot, and the one north

of it, bounded by I and K, 8th and 9th streets, at about four cents. Ground very much above the grade where it required cutting, and that considerably under the grade sold at a less price.

Q. As a dealer in real estate, would you yourself have been willing to have given the price indicated at that time?

(Objected to.)

A. Well, if I had been making purchases in that neighborhood
192 at that time, I should have considered that a fair price.

Q. If you have not been the largest and most frequent dealer in real estate for a number of years, including those already indicated, have or have not your transactions been among the largest and most frequent?

A. I believe they have; and pretty large; I have owned property in almost every ward in the city, and have bought and sold for the last thirty years.

Q. Have you had opportunity as a resident of Washington and a business man to observe the effect upon the price of real estate in this city of what are called financial panics?

A. I have; I have never considered that a financial panic had any very injurious effect in Washington, especially on real estate, in
193 consequence of our having but little commercial business. We have few merchants who sell on credit at the South and West like most commercial cities in the North; therefore I do not think we are seriously affected by a commercial panic throughout the country.

Q. Has the payment monthly of large sums from the Treasury of the United States had any influence in affecting the consequences of such panics here?

(Question objected to as irrelevant.)

A. The disbursements at the Treasury, of course, have kept us afloat here for a long time, and kept off the consequences of any panic.

Q. Was it with the remembrance of the existence of a so-called panic at the commercial centres of the country in 1857 that you made your estimate of the value of the squares concerning which you were
194 interrogated?

(Objected to.)

A. I remember there was a panic in 1857; I don't think it affected the price of real estate in Washington. I estimated the value, knowing all the facts—as to what occurred in 1857.

Examination-in-chief closed.

M'r Norris requests an adjournment until Thursday, the 3d of October, 1872, at 12 o'clock meridian, for the purpose of cross-examining the witness now on the stand, wishing to see the testimony in short-hand written out.

Adjourned to meet at same place at 12 m., on Thursday, October 3, 1872.

A. S. WORTHINGTON,
Examiner.

THURSDAY, *October* 4, 1872.

Met pursuant to adjournment. Present, the plaintiff and defend-
195 ant; M'r Stanton, of plaintiff' counsel, and Messrs. Norris and Davidge, defendant's solicitors.

M'r William B. Todd, the last witness, is present, and offers himself for cross-examination. M'r Davidge requests that the cross-examination of this witness be postponed till Monday at three o'clock. No objection is made, and M'r Todd retires.

Moses Kelly, a witness produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

My name is Moses Kelly; I am 53 years of age; I reside in Washington City and am cashier of the National Metropolitan Bank of said city.

Being examined in chief by M'r Stanton, he says:

Q. How long have you resided in this city?

196 A. Since the summer of 1842.

Q. During that period have you had opportunity, and, if so, in what way, to become acquainted with the price of real estate in the city of Washington, referring especially to the years 1857 and 1858?

A. I have had opportunity of becoming acquainted to some extent, having purchased and sold more or less almost from the commencement of my residence here. I don't remember, however, of having any special real-estate transactions in the years 1857 and 1858.

Q. Do the opportunities which you have had enable you to express an opinion as to the value of squares 910 and 911, situated between H and K streets north and 8th and 9th streets east, in the years 1857 and 1858?

A. I think they do.

197 Q. What do you consider to have been the value per square foot of the ground in those squares at the time indicated?

A. I should think square 910 was worth at that time three and a half (3½) cents a foot; I should think the other square, 911, was worth two cents more—five and a half (5½). The H-street front of 911 was paved, I think.

Q. Have you had opportunity, as a resident of Washington and a business man, to observe the effect upon the price of real estate in this city of what are called financial panics existing at the commercial centres of the country?

(Objected to as calling for conjecture and speculation of the witness.)

A. As a general rule, I think the effect here has been compara-

198 tively light. A year ago, at the time of the Chicago fire, which produced unusual stringency in the money-market, it was hardly, so far as I knew, perceptible here; it was comparatively so.

(Answer objected to as not responsive.)

Examination-in-chief closed.

Cross-examination by M'r Davidge:

Q. In what way do you undertake to fix the value of squares 910 and 911 in 1857 and 1858?

A. I think I would have been willing to pay that for them at that time. A brother-in-law of mine had some years before purchased a part of a square on Boundary street, about north of it, for which he paid, I think, about four cents a foot. The square I refer to was on the north side of M street; the street was only partially improved. My brother-in-

199 law's name was Tho's J. Johnson. He and Colonel Philip, the Sixth Auditor, purchased a square between them. I am not positive as to the year of my brother-in-law's purchase; I think it was in 1854.

Q. Were you acquainted with squares 910 and 911 in 1857 and 1858?

A. I had a general acquaintance with all that section of the city.

Q. Did you ever in those years buy or sell in that neighborhood?

A. No, sir; but I have purchased since that time in the neighborhood. I purchased square 912 a few weeks ago at fifteen cents a foot.

Q. You say you never bought or sold property in that neighborhood in 1857 or 1858. Had you ever during those years any occasion to in-

quire into and ascertain the value of property in that neighbor-
200 hood as security for loans or for any other purpose?

A. I had not for loans; but at the time my brother-in-law made the purchase I have referred to he did consult me as to the price which he was paying for it. That is the only instance I recollect of when I had any occasion to make inquiry in reference to those matters. That, I think, was in 1854.

Q. Except in the case of your brother-in-law do you recollect ever hearing of the value of property in the neighborhood of squares 910 and 911 in the years 1857 and 1858?

A. I think not, sir.

Q. Then your whole knowledge and means of knowledge in respect to the value of these square' in 1857 and 1858 consists in the purchase of your brother-in-law in, you think, the year 1854?

201 A. I don't know of any other transaction that came directly under my personal notice. I only give my opinion as to the value of the property at that time from the impressions then formed and from my general knowledge of that section of the city. I think, I repeat, that I would have been willing to give those prices at that time.

Q. (Question repeated.)

A. No; I do not think so. I think some judgment can be formed from the present values.

(Last answer objected to as not responsive to the question.)

Q. (Question repeated.)

A. I think my knowledge depended in part upon the general information I had in reference to that portion of the city.

Q. Having no transaction in property in that neighborhood, and
202 having no occasion to inquire into such value, do you think that after the lapse of fifteen years you can undertake to give impressions formed in 1857 and 1858 as to the value of property in which you had no sort of interest?

(Answer objected to because it assumes an erroneous state of facts, the witness having testified that he had a general knowledge of the value of real estate in the city and in that locality; that he had been consulted and made inquiries in reference to one transaction in that locality; that his own purchases since that time had given him historical information respecting the value at the time indicated, and that, as a business man and dealer in real estate, he would himself have
203 been willing to give at the time indicated the price which he has mentioned as his estimate of the value of the property.)

A. I have not stated that I formed an impression in 1857, but that my present impression is that I would have given those prices at that time.

Q. Can you recollect what your impressions in 1857 and 1858 were as to the value of property in that neighborhood?

(Objected to because the subject of the witness's testimony is his opinion now as to the value of the property then.)

A. It has been my impression for many years, probably as far back as 1857, that property on or near H street must rapidly increase in
204 value, and that it was desirable to purchase to hold as an investment.

(Answer objected to by M'r Davidge as not responsive.)

Q. Can you recollect what your impressions in 1857 and 1858 were as to the value of property in that neighborhood? Can you recall them now?

A. I don't know that I had definite impressions at that time as to the value of property in that neighborhood.

Q. (Question repeated.)

A. I do not know that I had any such impression.

Q. Can you recall any?

A. I cannot.

Q. Were real-estate prices in the city of Washington higher in 1854 or in 1857 and 1858?

A. I am unable to answer that question.

Q. Don't you know?

205 A. I do not.

Q. Are you unable to state whether the panic of 1857 depreciated real-estate values in that or the following year?

A. I am not able to say; my impression is that the depreciation, if any, was but slight.

Q. Did you buy or sell in 1854, or thereabouts, and in 1857 or 1858?

A. It is quite likely I did; there is scarcely a year passed for twenty-five years that I have not bought and sold some.

Q. And you cannot recollect that the panic of 1857 effected real-estate values save to a slight extent?

A. I can only say that, so far as my own is concerned, I do not think it was affected injuriously. I don't think I ever lost a dollar on real estate in my life.

206 Q. Did you sell any real estate in 1857 bought in 1854?

A. Not that I now remember.

Q. You have spoken of the value of these squares in 1857 and 1858. What would have been the effect upon that value of an outstanding claim of title which the holder refused to relinquish and determined subsequently to litigate in court?

(Objected to as making an incorrect and incomplete statement of the facts existing in the present case.)

A. I think it would have rendered them unsalable.

Q. Would you have touched the property as purchaser, there being an outstanding claim of title?

(Objected to.)

A. I would not.

207 Q. Is M'r Peugh, the complainant, indebted to you or to the bank which you represent?

A. He is not, sir.

Cross-examination closed.

Re-examination by M'r Stanton:

Q. In respect to advantageousness of situation, how did the squares purchased by your brother-in-law compare with squares 910 and 911?

A. It was inferior to 911; I think better than 910. The south front of 911 was graded and paved.

Q. Supposing the claim referred to in your cross-examination to have been a tax-title pronounced by high legal opinion to be invalid and worthless and afterwards decided to be so, what would have been the

208 effect upon the value of the property?

A. I think its salable value would have been very much impa'red. I should not myself have thought of purchasing it.

Q. Would that effect have been influenced by the character of the claim?

A. I think it would.

Q. Supposing a covenant of general warrantly to have been given and the cost of defence against any proceeding upon the claim to have been guaranteed, what would have been the effect?

A. It would not have been sufficient to satisfy me, for I attach very little importance to the covenant of general warranty. I am never satisfied with anything less than a perfect title.

209 Q. Would it not have had an effect with others as a protection to the title?

(Objected to as calling for a matter of opinion and conjecture; and because, further, the effect of a covenant of general warranty upon any mind depends upon the ability of the covenanter to respond in damages.)

A. It is very probable that it might.

Examination closed.

MOSES KELLY.

Sworn and subscribed to before me this 4th day of October, 1872.

Adjourned to meet at same place at three o'clock on Monday, October 7, 1872.

A. S. WORTHINGTON,
Examiner.

MONDAY, *October* 7, 1872.

Met pursuant to adjournment.

210 Present, the plaintiff and the defendant; M'r Stanton, of plaintiff's counsel, and M'r Davidge, of defendant's counsel.

M'r Todd not appearing, his cross-examination is by consent postponed till the next meeting.

SOPHIA MYERS, a witness heretofore sworn and examined in this cause on behalf of the plaintiff, being recalled by plaintiff's counsel, deposes as follows:

Being examined by M'r Stanton she says:

Q. Do you know the two squares of ground in the northeastern part of the city between 8th and 9th streets east and H and K streets north?

A. Yes, sir.

Q. Have you had opportunity to know what was the value of ground in that locality in the year 1857 or 1858?

A. I paid between four and five cents for mine, which is on I

211 street between 7th and 8th.

Q. At the time I mentioned?

A. I think about fifteen years ago.

Q. Was that the worth of the ground at the time?

A. I think it was.

Q. Did you try to find out how much the ground was worth before you bought it?

A. No, sir; I went to the man and asked him what he would ask for the ground, and he said he would sell it to me for that price, and I did not ask him anything more about it.

Q. Whom did you buy it from?

A. M'r Joachin.

Q. Do you know how the two squares between 8th and 9th streets and H and K streets were occupied in the middle and latter part of the war?

A. I think the government used it.

212 Q. How?

A. Put the railroad on it.

Q. Besides being used for the railroad were the squares used by the government for other things, and, if they were, for what things?

A. They had wood laying on it.

Q. How long did the government [illegible]

A. I think they used it the whole [illegible] on it until, I think, the war was all over.

Being cross-examined by M'r Davidge she says:

Q. Was anybody claiming a title to your ground, when you bought, adverse to M'r Joachin?

(Objected to.)

A. I guess not. Nobody didn't say anything to me about it

213 bought the ground two years before he gave me a deed of it, nobody said anything to me about it. My deed was made to me and I bought a couple of years before. It was two or three years before; I don't know exactly.

Q. You bought on credit then from M'r Joachin?

A. I paid it in about three months.

Q. Then why did you not get your deed?

A. Another person had bought another lot from M'r Joachin, and although I paid up he did not, and M'r Joachin waited till we had both paid before executing the deed.

Q. How much did you buy from Joachin?

A. Seventeen foot front and ninety feet deep.

Q. Your deed will show the price you paid, will it not?

A. Yes, sir; I suppose so.

214 Q. Have you any doubt that your deed will show the amount you paid?

(Testimony concerning the expressions of the deed objected.)

A. I could not read it.

Q. Was it read to you?

A. No, sir. I did not get it myself. My cousin got it for me. He is the other person to whom I referred as buying another lot. He is dead now.

Q. M'r Joachin is living, is he not?

A. Yes, sir.

Q. Are you sure you got your deed in 1860?

A. Yes, sir.

Q. And that you made your purchase two or three years before that time?

A. I bought it and paid for it two or three years before.

215 Q. You have been examined before in this case, have you not?

A. Yes, sir.

Q. When?

A. Last August.

her
SOPHIA + MYERS.
mark.

Sworn and subscribed to before me this 23d day of June, 1873.

A. S. WORTHINGTON,
Examiner.

JOHN LIPPARD, a witness produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

My name is John Lippard; my age is 52 years; I reside on H street, between 6th and 7th, northeast; I am a gardener. I have known Mrs. Peugh about twelve years; I do not know M'r Davis, the defendant.

Examination-in-chief by M'r Stanton:

216 Q. Do you know the two squares of ground between 8th and 9th streets east and H and I streets north?

A. Yes, sir.

Q. Do you know how those two squares were used during the middle and latter part of the war? and, if so, state in what way.

A. The squares were fenced in. M'r Peugh told me he had fenced them in. (Declarations of the plaintiff objected to.) There was wood on them.

Q. When was there wood on them?

A. In war-time.

Q. Do you know who used it for putting wood on?

A. I do not know.

Q. Do you know whether or not there was a line of railroad running over one of those squares, the north one?

A. There was.

Q. Did you see soldiers around there?

217 A. Yes, I see soldiers about there; they put camps on the squares.

Q. When did you see the soldiers there?

A. They were there one night. It was in the war-time.

Q. Do you know what became of the fences around the squares?

A. I don't know anything about it.

Q. Do you know how long the fences staid there?

A. I can't say exactly.

Q. Did it stand there through the war-time?

A. I don't know; I was living further up.

Q. Do you know who took the fences away?

A. I do not know, indeed.

Q. Do you know whether it was burnt up or taken away?

A. I don't know.

218 (M'r Davidge here suggests that the question be made not quite so leading.)

Q. (By M'r Merrick, of plaintiff's counsel, who entered after this witness took the stand.) Do you understand these questions?

A. Some of them I do.

Q. (By M'r Merrick.) You don't understand the English language well, do you?

A. I do not understand all.

(M'r Merrick asks that the examination be suspended "until we get an interpreter.")

JOHN LIPPARD.

Sworn and subscribed to before me this 27th day of June, 1873.

Adjourned to meet at 3½ o'clock on Wednesday, October 9th, 1872, at same place.

A. S. WORTHINGTON,
Examiner.

219 WEDNESDAY, *October 9th*, 1872.

Met pursuant to adjournment.

Present, the plaintiff and the defendant; M'r Stanton, of plaintiff's counsel, and M'r Davidge, of defendant's counsel.

M'r Todd appeared and submitted himself for cross-examination, but at M'r Davidge's request, his cross-examination was postponed till the next meeting.

JOHN G. F. JOACHIM, a witness produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

My name is John G. F. Joachim. I am seventy-five years of age. I

live in this city on street, between 1st and North Capitol. I am so old I have no business. I know M'r Peugh, but don't know M'r Davis.

Examination-in-chief by M'r Stanton:

220 Q. Did you own property in the neighborhood of H and K streets north and 8th and 9th east, fourteen or fifteen years ago?

A. No, sir. I owned property between I and K and H and I, and between 7th and 8th. I bought it in 1851.

Q. Did you own that property in 1858?

A. Oh, yes; I bought it before that.

Q. How much was that property and property in that neighborhood worth in the years 1857 and 1858?

A. Well, sir, I sold there for between four and five cents a foot. I did not make a sale by the foot, but by the lot.

Q. Was that the value of the squares between H and I and I and K, and between 7th and 8th?

A. Yes, sir; that was the value of the squares between H and I and I and K, and between 7th and 8th?

221 Q. Did and does the Baltimore and Ohio Railroad run over a corner of the square between I and K and 7th and 8th?

A. Yes, sir.

Q. Were your sales in 1857 and 1858 made in the square between H and I, or in the one between I and K?

A. Between I and K.

Q. Was the square between 8th and 9th worth more or less than the square between 7th and 8th?

A. Well, I don't know. There is not much difference between both. What I think, there is not much difference between it, because they all lay between I and K.

Q. Were the squares fronting on H street between H and I worth more or less than the squares back of them between I and K?

(Objected to because already answered.)

222 A. Those on H street be worth a little more than the others.

Q. Do you know how the square between 8th and 9th and I and K was used from the middle of the war to the end of it?

A. Yes; the soldiers used it. They tore all the fence away.

Q. Do you know whether or not there was in the war a line of railroad over the square between 8th and 9th and I and K?

A. Yes, there was; the soldiers made one there.

Q. Did the soldiers use the railroad?

A. Yes, sir; they used it pushing wood in; they brought wood for the soldiers.

Examination-in-chief closed.

Cross-examination by M'r Davidge:

Q. How many squares did you buy in 1851?

223 A. Two, from H to K, between 7th and 8th.

Q. From whom did you them?

A. From Georgetown College.

Q. What did you give the college for these two squares?

A. Well, I paid three mills a foot.

Q. Did you sell off pieces of these two squares from time to time?

A. Yes, sir.

Q. To whom did you sell? Name, as well as you can, the people who bought from you.

A. There is a man, his name is Mangum; he bought a lot from me; M'r Meyer, who was here day before yesterday, is another; I sold

some to Henry Riggs; I sold some to Henry Tryer (or Dryer); the balance I gave to my son-in-law.

Q. Did you sell to your son-in-law?

224 A. Yes, sir. I sold some lots to my son-in-law, George Carll, and the balance I gave to my daughter. I sold one lot to a man—his name is Heineman.

Q. How much a foot did Mangum pay you?

A. Well, sir, I told you before I did not sell by the foot; I sold by the lot. He asked me for twenty-five feet front by one hundred and twenty-four deep, and so I asked him a hundred dollars.

Q. When did Mangum buy?

A. About 1853. He was the first one to buy.

Q. When did you sell to Henry Riggs, and what did he pay?

A. I believe about 1855 or 1856, I don't know exactly; he got thirty-five feet front and ninety feet deep, and he paid me one hundred and twenty-six dollars.

225 Q. When did Tryer buy, and what did he pay?

A. At the same time Riggs did. Tryer bought one lot. Well, his lot was thirty-three feet front and two hundred and forty-eight feet deep—from one street to the other. He paid me two hundred and forty-six dollars.

Q. When did Heinman buy, and what did he pay?

A. He bought about 1856 or 1857. He got nineteen feet front, ninety feet deep. He paid seventy-four dollars.

Q. When did Carll buy, and what did he pay?

A. He bought about 1858 or 1859. He got three lots, six, seven, and eight. I gave him those lots for eight hundred and fifty dollars.

Q. Was the property higher in 1857 and '58 than it was in 1854?

226 A. Yes, sir.

Q. Do you recollect hearing of what was called a panic in 1857?

A. A panic? I don't know what that is.

Q. Do you recollect hearing that in 1857 the price *price* of real estate went down in this city, and generally in the country?

A. No; I don't recollect that; I don't know.

Q. Do you think property over town was as high in 1857 as it was in 1854?

A. I think so; it was higher.

Q. I mean property generally about the city of Washington; do you think that was higher in 1857 than it was in 1854?

A. Well, sir, I think it must be so, because we had to pay more taxes in that time.

227 Q. Do you think you had to pay more taxes on the same property in 1857 than you did in '54?

A. I know that is so, because I had to pay it.

Q. In what square were the sales you have mentioned made?

A. In square 888.

Q. Did you, between '51 and '58, make any sales in square 889?

A. No, sir.

Q. Your title to the square in which you made sales was perfect, was it not?

A. Oh, yes, sir.

Q. Nobody ever threatened to sue you to take from you the squares you bought from Georgetown College, did they?

(Objected to.)

A. No, sir. The government made a present of it to Georgetown College, and I got it from the college.

228 Q. Suppose, when you bought from Georgetown College somebody claimed that the squares did not belong to the college, but to him; what price would you have given?

(Question objected to as totally irrelevant and as improper.)

A. I knew no one had any claim on it, because it was government——

Q. (Question repeated.)

The examiner explains the question to the witness, who then says:

He might say what he pleased. I got my deed and my title, and know it is mine.

Q. Would you have bought these squares if you had known you were to have a lawsuit with a man who claimed that they belonged to him?

(Objected to.)

A. I know if anybody had a lawsuit against me I would not buy the ground.

229 Re-examination by M'r Stanton:

Q. How much of lot six was cut off by the Baltimore and Ohio Railroad; about how much?

A. I don't know; it is hard to tell.

Q. Did it cut off part of one of the lots that was sold to your son-in-law?

A. Yes, sir.

JOHN G. F. JOACHIM.

Sworn and subscribed to before me this 27th day of June, 1873.

A. S. WORTHINGTON,
Examiner.

WILLIAM F. SMITHSON, a witness produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

My name is William F. Smithson; I am fifty-five years of age;
230 I reside in the city of New York; I am a banker; I know both the parties to this suit.

Being examined by M'r Merrick, of plaintiff's counsel (who has just entered), he says:

Q. What business were you engaged in, and where, in the year 1857, particularly during the months of July and September of that year?

A. In the banking business in the city of Washington; my banking-house adjoining the Bank of Washington.

Q. Have you the books of your house at your command, of that year, during the months of July and September?

A. I have them present.

Q. Will you please turn to the books and look at the account of S. A. Peugh, and state whether, in the month of July, 1857, you
231 paid a check of S. A. Peugh to the amount of one hundred and twelve dollars and fifty cents; and, if so, at what time that check was paid?

A. On the 8th of July, 1857, I paid a check of M'r Peugh's of one hundred and twelve dollars and fifty cents.

Q. Will you please to look through the account of S. A. Peugh for the month of July, 1857, and state whether or not it appears from said account that during that month you paid more than one check of one hundred and twelve dollars and fifty cents?

(Objected to as irrelevant.)

A. I have looked through the account and find that I paid no other check of $112.50 during that month.

Q. Will you now look at the account of S. A. Peugh for the
232 month of September, 1857, and state whether or not during that month you paid according to said account any check of S. A. Peugh for one hundred and twelve dollars and fifty cents?

A. By an examination of M'r Peugh's account in the month of September, 1857, I find that I paid one check of his for one hundred and twelve dollars and fifty cents.

Q. When was that check paid?

A. On the 12th day of September, 1857.

Q. Will you look through the account of S. A. Peugh for the month of September, 1857, and state whether you find any record of another check for one hundred and twelve dollars and fifty cents paid during that month?

A. I have looked through the account for September, 1857, and find that I paid another check for $112.50.

233 Will you now look at Exhibits I and K, filed with the deposition of H. S. Davis in this case, and state whether you are able, upon anything appearing thereon, to recognize such exhibits as papers that passed through your book; or whether there are any marks thereon indicating, however slightly, that they may have passed through your bank?

(Objected to, because calling for matter of opinion and conjecture.)

A. Upon an examination of both papers I discover a round hole in the middle of the checks, which may be found on all my filed checks.

Q. Do you know the handwriting of H. S. Davis from having seen him write or corresponding with him?

A. I have seen M'r Davis write, but it has been so long since I could not say that I recollect his handwriting sufficiently to identify
234 it now.

Q. Look at Exhibits B, C, and D, and H to the deposition of H. S. Davis and examine the signatures to said exhibits conceded to be his in the deposition, and then look at the endorsement of the name of H. S. Davis upon Exhibits I and K to said deposition, and state whether or not, your memory refreshed in regard to his handwriting by examining his signatures to the papers first referred to in this interrogatory, you are able to state whether or not the endorsement of his name upon said Exhibits I and K is in his handwriting.

(Objected to, because the witness has already stated that he cannot identify the handwriting of M'r Davis, and because he has not said that his memory would be refreshed by the exhibition of specimens
235 of such handwriting; and because the question as propounded simply calls for a comparison of handwriting.)

A. Upon an examination of the different papers named I cannot say that my memory is sufficiently refreshed so as to identify M'r Davis' handwriting. The examination enables me by comparison to answer that I am of the opinion that the handwriting is the same.)

(The last sentence of the answer objected to, because on its face the result of mere comparison and matter of opinion.)

Q. How long have you been engaged as cashier of a bank or otherwise engaged in a bank in any capacity that required you to examine and inspect handwriting?

(Objected to, because the witness has not stated that he has ever
536 been at any time engaged as cashier, nor has he said that he possessed any facility in respect of examining or testing handwriting not possessed by business-men ordinarily.)

A. I have been engaged in the banking business about twenty years more or less.

Q. State whether or not in your duties in the banking business you were required to examine handwriting, and whether you consider yourself, from your experience as an expert, capable of determining upon the genuineness of handwriting.

(Objected to.)

A. My duties as a banker required that I should be a careful observer of handwriting; and while I do not consider myself an expert, I am a pretty fair judge of handwriting.

237 Q. Comparing the endorsements upon Exhibits I and K with the signatures to the Exhibits shown you marked B, C, D, and H, state whether you judge them to be in the same handwriting or not.

(Objected to for reasons already stated.)

A. By the comparisons which I have made, I think all the signatures and endorsements were written by the same hand. I mean the signatures to the Exhibits B, C, D, and H, and the endorsements on the Exhibits I and K.

Examination-in-chief closed.

Cross-examination by M'r Davidge.

Q. Have you any recollection of the fact of M'r Henry S. Davis having at any time presented a check for payment at your banking-house in this city?

238 A. I have no distinct recollection of his presenting a check in person.

Q. You have referred to your book showing payment of the checks of M'r Peugh on the 8th of July and the 12th of September, 1857. What book is it you have referred to, and what are the entries, and in whose handwriting are those entries?

A. It is my day-book. The entries are as follows: Under the date Washington City, July 8, 1875, and under the heading sundries, dr. to cash, "S. A. Peugh, paid his checks 112.50, 300, 412.50." And under the date Washington, September 12, 1857, and under the heading sundries, dr. to cash, "S. A. Peugh, paid his check $112.50." These entries are in the handwriting of Charles Wilson, who was a clerk in the bank at the time.

239 Q. Who paid these checks?

A. I paid them. I think so from the fact that I paid all the checks that were presented at the counter.

Q. Did you make any entry of those payments at the time?

A. I do not recollect that I did.

Q. When you paid checks, who made the entries?

A. When I paid the checks I placed them on file and handed said file to my clerk, Charles Wilson, who recorded them on the day-book.

Q. Was he in the habit of recording them at the time they were paid, or did he make up his books subsequently from the checks paid by you and filed?

A. He recorded them subsequently, when handed over to him by myself.

240 Q. How long a time would elapse after payment of checks before you handed them over to him to make the proper entries?

A. He recorded them in the afternoon of the same day or early next morning.

Q. You have spoken of a hole in each of the checks that are at or near

the middle. Is there anything peculiar about those holes, or are they such as are made by by any needle-part of a file for holding papers?

A. Nothing particularly peculiar, except I file all my checks on a round file or needle, and was generally particular in placing them on the file at or near the middle of the check.

Q. Was your needle manufactured by you or did you buy it?

A. I really do not recollect; I rather think it was made specially
241 for me; by whom I don't recollect.

Q. Was there any difference between that and other needles used for filing papers?

A. There different kinds of files; some use three-cornered or three-edged files, which make a much larger hole. Some cancel by a hammer with three edges.

Q. Is a round needle at all uncommon?

A. I cannot say that it is.

Q. Is it not quite so common as any other shape?

A. I suppose it is.

Q. In any matter of importance to yourself, then, depending on the genuineness of a paper, the fact that you found a hole in it at or near the middle, and a round hole, would not induce you to believe it had ever been in your possession, would it?

242 A. I should not regard that of very great significence, but that was my style of cancelling checks.

Q. As a banker, you would be particular, of course, where checks were payable to a party or order, and the checks were presented by a third person, to examine the signature of the payee. But, suppose a drawer of a check presented to you his own check on his own funds in your hands, payable to another, and purporting to be endorsed by that party, would you then examine at all into the genuineness of the endorsement of the payee? Would it not be sufficient for you that the party whose account was to be charged was the party presenting the check?

A. In reply to the first question, I remark that I should ex-
243 amine the signature or endorsement with special care. And in the second case I should be equally particular to examine the endorsement, and should most assuredly ask the drawer if the payee had endorsed it in his own handwriting, before paying the check.

Q. Do you not think you would be safe in the case I have put in paying the check handed to you by the drawer without any special inquiry into the genuineness of the handwriting of the payee?

(Objected to as involving a legal question and not a question of fact.)

A. Without regard to the question whether I should be safe or not, it is an imperative rule, when a check is presented, to know that it has been properly endorsed before payment is made.

244 Q. You say you would inquire of the drawer of the check when he presented it. Would you do anything more?

A. It would depend upon his answer to the question; if he should say it was endorsed by the party to whom he made it payable, I should take his word for it and pay the check.

Q. You have said that you have no distinct recollection of M'r Henry S. Davis having on any occasion during the time you were in the banking business in this city, presented to you for payment any check whatsoever. What do you mean by distinct recollection? Can you say that at any time to your recollection M'r Davis ever presented a check to you for payment during the whole time you carried on business as a banker in this city?

245 A. Since this matter has been brought to my attention, and upon the examination of my books, somehow or other it appeared to me that I had paid M'r Davis some money on checks, and I endeavored to refresh my memory touching the fact; but as I could not satisfy my mind that it was a fact, I was unwilling to say that I had done so; and I so told M'r Peugh.

Q. What was there in the examination of your books that tended in any degree to leave any impression upon your mind, however vague, that you might have paid money on checks to M'r Davis?

A. The fact of looking into, giving back, and examining my mind upon the subject for the purpose of determining whether I could
246 recollect whether I had paid M'r Davis the checks or some one else.

Q. Then there was nothing disclosed by your books that tended, however remotely, to leave the impression upon your mind that you had paid any money on checks to M'r Davis, was there?

A. All of the incidents, and the effort on my part to examine into my business, as it is my habit to do; the effect of the examination of the books may have made an impression upon my mind.

Q. But there was nothing in the books alone that tended in any degree, however remotely, to make that impression, was there?

A. Nothing more than what I have stated.

Q. Then the impression was the result solely of looking into
247 and going back and examining your mind on the subject, was it not?

A. I cannot more distinctly answer the question than by saying that all this combination of facts must have been helpers to my recollection.

Q. Now, do me the favor to state the combination of facts to which you refer, and which operate as helpers, as you state.

A. The fact of the examination of my books and the checks in question, and the effort on my part to refresh my memory as best I could.

Q. When did you first see M'r Peugh upon this subject, and where?

A. Mr. Peugh has spoken to me several times upon the subject, but I have not charged my mind particularly with the details until I saw him this morning at his house. Within the past week I have re-
248 ceived several letters from M'r Peugh, and, while I have been thinking of the matter, I have not given the question serious and searching attention until to-day.

Q. Can you tell me when Peugh first spoke or wrote to you upon the subject?

A. Well, I really can't say. He was in New York some twelve months ago, and mentioned it, without going into particulars; and I saw him again in Washington City, either in the month of February last or April, I really don't recollect which, when he mentioned the subject to me.

Q. Did he ever mention it before the occasion of his doing so in New York, about a year ago?

A. I do not recollect that he did.

Q. I understand you to say you first examined your books this morning at the house of M'r Peugh?

249 A. I did not say that I examined the books at the house of M'r Peugh.

Q. When did you first examine your books on this subject?

A. To-day, about eleven o'clock, I think.

Q. Where?

A. At the office of the Washington City Savings Bank, where I have my books stored.

Q. What time were you at the house of M'r this morning?

A. I arrive' there about seven and a half o'clock, I think.

Q. And you conversed with him on this subject, did you not?

A. I did.

Q. Now tell me whether in that conversation he did not tell you, as a positive fact, that you had paid these checks to M'r Henry S. Davis?

A. He certainly did not, nor anything like it.

250 Q. Did he tell you as a fact that these checks were endorsed by Henry S. Davis?

A. I think he did say that the checks in question were endorsed by M'r Davis, though I will not be positive about it. On the examination of the checks he called my attention to the endorsement here in this office.

Q. Did he not assert to you at his house, as a fact, that he had paid these two sums of $112.50 each to M'r Henry S. Davis by means of these checks?

A. Yes, sir; I think he did.

Q. Then do you not suppose that the impression on your mind that you have attributed to examination of the books and mental processes on your own part might have been the result of the positive statement of M'r Peugh?

251 A. No, sir; I do not think it was. I did not think seriously of the matter until I left M'r Peugh and went to the office where I found my books, and on my return, at two and a half o'clock, to M'r Peugh's house, I told him of this slight impression, but that I could not swear to the fact; that the impression was too faint, and I should not have mentioned it in this examination but for the questions that were propounded to me touching the matter.

Q. Do you consider that impression at all reliable?

A. I cannot consider it sufficiently so as to state it as being reliable.

Re-examination by M'r Merrick:

252 Q. State whether or not all the entries in the book to which you have referred are in the handwriting of M'r Wilson, and whether it was his business to keep that book.

A. They are, and it was his business to keep that book.

Q. That was the day-book of your bank, was it not?

A. Yes sir.

Q. Have you the ledger of your bank present?

A. It is present.

Q. Will you turn to your ledger and say whether there are any entries upon that ledger embodying and verifying the entries given by you to the commissioner from your day-book of the 8th of July and the 12th of September, 1857?

A. I have examined the ledger, and there are entries verifying the entries of the day-book.

253 Q. Will you state, if you please, where M'r Charles Wilson, your former clerk, now is, and when you last heard of him?

A. I don't know where he is, and I have not heard anything of his whereabouts for the last twelve months, except from what M'r Davidge tells me at the present time, that he is dead.

Q. State, if you please, how long since he died, according to your best information and knowledge?

(Objected to.)

A. I have no knowledge about it except what I [illegible] and M'r Davis this evening. They said he was dead; I don't [illegible] what else.

WILLIAM T. SMITHSON.

Sworn to before me this 9th day of October 1872.

A. S. WORTHINGTON,
Examiner.

254 Adjourned to meet at same place at two o'clock on Friday October 11, 1872.

A. S. WORTHINGTON,
Examiner.

FRIDAY, *October* 11, 1872.

Met pursuant to adjournment, and by consent, adjourned to meet at same place at two o'clock on Monday October 14, 1872.

A. S. WORTHINGTON,
Examiner.

MONDAY, *October* 14, 1872.

Met pursuant to adjournment.

Present, the plaintiff and the defendant, M'r Stanton, of plaintiff's counsel, and Mess'rs Davidge and Norris, defendant's solicitors.

M'r Todd presented himself for cross-examination, and being cross-examined by M'r Davidge, he testified as follows:

Q. Do you recollect the purchase of these squares 910 and 911
255 with other property by Buckner Bayliss from the Young heirs in the year 1854?

A. I recollect of hearing him say that he had made a purchase of that kind; I think it was in 1854, though I am not certain about the period. I should think that was about the time.

Q. Were you interested or connected with that purchase in any way?

A. I made him a loan of some money, I think, about the time he purchased it. I think it was for that purpose.

Q. Were you to participate in the profits of the adventure?

A. I do not recollect whether it was in the profits or whether he was to pay me so much for the use of the money.

Q. State as *ready* as you can what amount of money you
256 loaned him for the purpose.

A. I do not recollect the amount.

Q. Was it as much as five hundred dollars?

A. Well, I do not recollect now; it might have been, or more.

Q. Was it as much as a thousand dollars?

A. I don't recollect.

Q. Was the loan made by you to Bayliss, whatever the amount, repaid in the proceeds arising from sales of the property so purchased?

A. I think it was; taken out of the sale. When the sale was made, however, I advanced a still further amount. I mean when the sale was made of these two squares to M'r Peugh. It was all settled then—the amount he paid me, and the amount I advanced; it was settled in the notes which M'r Peugh gave for the purchase. I took a por-
257 tion of them.

Q. Then your recollection is, that when Bayliss sold to Peugh, he, Bayliss, repaid to you the amount he had borrowed to purchase the

title of the Young heirs to these squares and other property; am I right?

(Question objected to as not responsive to the testimony of this witness; and counsel for the defendant notified that in respect to this matter, and other matters not responsive to the testimony-in-chief, the witness will be considered as testifying at the instance of the defendant.)

A. Yes; he repaid that, and I think some other. There was a general settling up at that time. There was some other matters, I think, we had taken out of these notes.

258 Q. Then the repayment was made in the notes of Peugh?

A. Yes.

Q. There was a large amount of property purchased by Bayliss from the heirs of Young, was there not?

(Objected to.)

A. I think there was, at several times.

Q. I speak of the purchase including squares 910 and 911. Was there not, when those squares were purchased by Bayliss, a large amount of property bought at the same time?

A. I do not remember now.

Q. Did you buy from the Young heirs their title to any property about the year 1854?

A. Well, I think I did, somewhere about that period. I bought on several different times.

Q. Try to give me what squares you bought from the Young heirs.

259 A. I bought a good deal in square 673. I think I bought squares 908 and 909. I had a tax-title to most of this property, and this was a quitclaim deed from Young's heirs that I bought. The heirs of Nattley Young conveyed to George Washington Young to facilitate conveyancing, and he conveyed to me.

Q. Who acted as the agent or attorney of the Young heirs, of George Washington Young, in these transactions with you?

A. Well, I think M'r John Carroll Brent acted for the heirs.

Q. Can you recollect any other property in which you bought out the title of the Young heirs?

A. Well, I bought a good deal from different branches of the Young family when it had been divided between them; I cannot recollect

260 —well, I bought considerably in square 353; I cannot recollect the year.

Q. Squares 908 and 909 are in the neighborhood of 910 and 911, are they not?

A. They are immediately north.

Q. What did you give for those squares per foot?

A. I do not recollect now; it was a very small amount. In consideration of having had the tax-title they compromised it on a very small amount. I do not recollect the precise sum.

Q. Was it as much as half a cent a foot?

(Objected to.)

A. I do not recollect. I think where there was several pieces conveyed it was so much for the whole—a certain sum named. I do

261 not think it was calculated by the foot. It was a compromise of their interest.

Q. And for your interest, too, was it not?

A. Yes, sir; I considered it so when I bought out the original title.

Q. Now, sir, I want you to give me your best recollection as to what you paid the Young heirs for squares 908 and 909.

(Objected to, because the evidence, if admissible at all, will be admissible only in relation to the squares named in the question, and the witness has testified in effect that the price which he paid in purchasing the interest of several heirs was a compromise and a compromise with them, he holding an adverse tax-title, and was not a fair criterion of the value of the property.)

262 A. Well, I do not recollect, really.

Q. Give us about your best recollection.

(Objected to, as too uncertain, and also for the reason stated in the preceding objection.)

A. Well, I do not think it was more than three or four hundred dollars; perhaps not so much as that. I have had so many transactions that I cannot recollect always the amounts.

Q. When you name the above amount, do you refer to both the squares, or do you mean the amount named for each?

A. I mean both. I do not know whether they were in the same conveyance or not, or purchased at the same time.

(The testimony in relation to these squares is also objected to,
263 because witness cannot, with any degree of certainty, fix the time.)

Q. Do you recollect to whom you paid the money for squares 908 and 909?

A. I think through M'r Bayliss.

Q. To whom?

A. I think to J. Carroll Brent or George Washington Young.

Q. The effect of the tax-title you held was to depreciate very considerably the value of the squares 908 and 909, was it not?

(Objected to, because the effect of the tax-title would depend upon the strength of the tax-title, and because the inquiry has no proper relevancy to the case.)

A. I suppose they considered it so—the reason of their desiring to compromise it.

Q. Did you ever have your tax-title to squares 908 and 909 ex-
264 amined by counsel, and its legality pronounced upon?

(Objected to.)

A. No; I do not think I ever did.

Q. Then it was a mere outstanding tax-title, the validity of which was unknown to you; was it not?

(Objected to.)

A. It was at that time.

Q. Did M'r Bayliss negotiate for you the purchase of squares 908 and 909?

(Objected to.)

A. I am not positive, but I think he did.

Q. What do you think was the value of squares *of squares* 908 and 909 at the time you bought with the outstanding tax-title?

(Objected to, because the time of purchase has not been sufficiently indicated by the witness, and because the effect of the tax-title
265 would depend upon its validity. Counsel also objects to the remark made by counsel for defendant, that he supposes the witness would not purchase at all as an outsider.)

A. Well, I bought the tax-title first—there was no outstanding tax-title—and then I bought of the Youngs to perfect that tax-title.

Q. Question repeated.

A. There was no outstanding tax-title. I don't see how I can answer that.

Q. Did you suppose at the time you were paying the Young heirs a fair price for these squares?

(Objected to, because of indefiniteness as to the time of the purchase, and because also the witness has testified in effect that the price
266 he paid was a compromise with a number of heirs, and furnishes no criterion as to the real value of the property, even if the time of the purchase were definitely fixed; and objected to also because the question as it is put relates, not to the real value of the property, but to the circumstances of this particular transaction.)

A. I did not suppose I was paying them the value of them by any means; that is, the value of the land. I supposed I was paying them the value of the interest they had in them.

Q. You have had many other transactions where there has been a tax-title effecting the price of real estate, have you not?

(Objected to.).

A. Yes, sir. I have had property where there has been outstanding tax-titles when I purchased it.

267 Q. Is not the effect of a tax-title very much to depreciate the value of the real title?

A. That would depend very much on the validity of the tax-title. I would generally get my lawyer to examine and report. Some tax-titles are good; others are bad. There might be an erroneous sale.

Q. But in the case of squares 908 and 909 you held a tax-title, and the validity of that tax-title had not been pronounced upon by counsel so far as you knew, and yet you were enabled to buy the title of the Young heirs, subject to the tax-sale, for a few hundred dollars?

A. I don't recollect whether I ever had them examined or not, but since I have been on the stand I remember now that the tax-titles
268 of the squares were purchased from the heirs of General Van Ness. I think one of them came Governor Cornelius Van Ness, perhaps both of them; they had been held by the Van Ness family for a great many years, and I think Governor Van Ness bought them at tax-sale.

Q. Had the squares ever been enclosed?

A. Not when I bought them. I do not know whether they had been before or not. The Baltimore and Ohio Railroad passed through 909—went through it diagonally; entered the southwest corner and went out at the northeast corner, and they had condemned a right of way through it of some twenty or thirty feet on each side. We always considered that that damaged the square very much.

269 Q. Do you know any other reason why you got those two squares for such a pittance, except the fact that there was an outstanding tax-title held by you?

(Objected to because, before repeatedly stated, no definite time is fixed for the purchase; because the witness has testified that the purchase was made as a compromise with a number of heirs; because the real value of the property was depreciated by the railroad, as just stated by the witness; and because, also, the effect of the tax-title, as the witness has already testified, must depend upon the validity of the tax-sale.)

A. I don't know of any other reason. I supposed that they knew what they were selling; that they also had examined into the title, and probably they thought they had better get something out of the
270 case. I had often heard M'r Carroll Brent speak of some tax-titles being good and others bad.

(Declarations of Mr Brent objected to by Mr Partridge.)

I supposed they fixed the price according to what he considered the tax-title was worth.

Q. I ask you again whether you know of any reason why you got these two squares of ground for a mere pittance except the fact that there was an outstanding tax-title?

(Objected to upon the grounds already stated, and because, also, it is impossible for the witness to testify as to what may have operated upon the minds of the numerous Young heirs in inducing them to make the sale.)

Q. I do not know of any other reason than that they supposed
271 I had a valid tax-title, and were willing to compromise on a small sum.

Q. What reason had you to suppose that they ever had your tax-title examined or its validity or invalidity or doubtful character pronounced upon by competent counsel?

(Objected to upon the grounds already mentioned, and also because the counsel asked for a supposition and received it, and because, also, the whole drift of these questions is merely for the purpose of eliciting negative testimony.)

A. I do not know that they ever had them examined, but they were intelligent business men, and I presume they knew what they were compromising.

272 Q. In the case of these squares 908 and 909, suppose your tax-title had been held by somebody else, and that he intended to litigate the titles in court, and the validity of tax-title was involved in doubt and worth the litigation. Then suppose the Young heirs had applied to you to buy these squares subject to such tax-titles and the prospect of litigation, what would you have given for them?

(Objected to, because irrelevant and inadmissible, and because the question is purely hypothetical, and because the conditions of the hypothesis are not presented in the case at bar.)

A. Well, I really cannot tell. I suppose I might have been purchasing at the time. I do not know really how I can state what I would have done.

273 Q. Would you have bought them at all with the prospect of litigation ahead?

(Objected to upon the grounds already stated.)

A. If I had desired a purchase I should have followed the advice of my lawyer as to the tax-title and danger of litigation.

Q. How much would the market-value of those squares have been affected by outstanding tax-titles and the prospect of litigation?

A. As I said before, that would depend on the report of the lawyer who examined the title as to what the chances were.

Q. Suppose a lawyer had told you the validity of the tax-title was doubtful?

(Objected to upon the grounds already stated.)

274 A. Well, I should probably not have purchased if there were serious doubts about it.

Q. How much would the value of those squares be affected, in money, by an outstanding doubtful tax-title which you knew would be litigated, and when the result of such litigation was doubtful—of the percentage?

(Objected to upon grounds already stated.)

A. It would be impossible for me to answer that question unless I knew all about the circumstances of the sale, that I might judge for myself in some measure of the chances.

Q. But suppose your counsel told you the result was doubtful, what then?

(Objected to on grounds already stated.)

275 A. Well, I probably should not be disposed to buy if he advised me not to.

Q. These squares 908 and 909 you bought about the year 1854, to the best of your recollection, did you not?

A. I think it was somewhere about that time.

Q. Did you ever sell any portion of these squares between 1854 and 1857 or 1858?

A. I did. I sold square 909—I forget what year—to M'r Peugh.

Q. What did he give you for it per foot?

A. I think it was about two or two and a half cents a foot. That is the square with the railroad running through it.

Q. Was it a cash or a credit sale?

276 A. Well, I think it might be considered a cash sale. I believe I put some cash with it and made a loan on M'r Peugh's house on G street.

Q. Well, how long did the credit secured by the house on G street run?

A. I do not remember now. The deed of trust which was given at the time will show. It was divided up into several payments, perhaps six, twelve, eighteen, and twenty-four months, or something of that kind. It may have been two or three years.

Q. Then the sale was not a cash sale, was it?

A. No; but I advanced cash to make the sale and took security on good property.

Q. Then you were selling under difficulties, were you not?

A. Well, I do not know that I was.

277 Q. Had you not to make a loan to Peugh to prevail on him to buy the square?

A. No; I think not. I think he could have bought it on credit if he so desired. He knew that I owned these squares, and he applied to me to buy it. Perhaps there was some other ground conveyed at the same time; I don't remember. He remarked at the time that he would like to have some money. I don't remember how much; perhaps one or two thousand dollars, perhaps more; and instead of giving notes for the square separately, he proposed to put the amount of the sale of the square and so much cash added to it to let him have a certain

278 sum of money, and instead of giving security on the square out there, he would give it on his four-story brick house opposite the Patent Office.

Q. You are not certain, then, that he gave for this square two or two and a half cents a foot, are you? May it not have been less?

A. I don't think it was less than two.

Q. Can you fix, with any degree of certainty, the amount of the loan that you made him?

A. I cannot.

Q. Why did you not take security upon the square?

A. I preferred to accept his proposition for security on improved property near the centre of the city, producing an income.

Q. What interest was he to pay upon the loan?

279 A. I really don't recollect, it has been so long since. I do not think he ever paid over six per cent.

Q. When did you make this sale; in what year?

A. It was after I got a deed from the Youngs. I do not recollect the

year. I got a deed from the Youngs in 1854. It must have been in 1855. I am not positive, though; it may have been later.

Q. The deed from you to Peugh will show what he gave, will it not?

A. I do not recollect that either. Sometimes different sums are put in. I think I have made out deeds where parties have requested me to put in different sums. In this case I do not remember.

Q. You recollect no request on the part of Peugh that any
280 but the true consideration should be inserted in the deed, do you?

A. No, sir; I recollect no such request.

Q. When Peugh bought from Bayliss squares 910 and 911 did you make a loan to Peugh, and did you take a deed of trust upon other property to secure as well the purchase-money for those squares as the amount of your loan? State fully what that transaction was.

(Objected to as not at all responsive to the testimony-in-chief, and as being otherwise inadmissible.)

A. Well, that was a transaction of M'r Bayliss with M'r Peugh. I discounted the notes, or a portion of them. There was about
281 sixty-seven hundred dollars' worth of the notes. I think there were six notes of eleven hundred and sixty-three dollars each.

Q. How much of these notes was for borrowed money?

(Objected to as not responsive to anything in the testimony-in-chief.)

A. I do not remember.

Q. The notes you discounted were secured by a deed of trust?

A. Yes, sir; on another of these houses on G street.

Q. Now please read the certified copy of the deed shown you, and tell me if you are not mistaken as to the transaction.

(Objected to for reasons already stated.)

A. I think this must relate to some other matter.

(Paper filed and marked "Exhibit, W. B. T., No. 1. A. S. Worthington, exam'r.")

282 (Paper objected to because not connected with the case.)

Q. When you discounted these notes, given in part for the purchase by Peugh of squares 910 and 911, were those notes secured by deed of trust; and, if so, upon what property?

A. The notes were secured by deed of trust and on one of the houses on G street, in square 429, I think it was. Whether it was the east or west house, I do not remember. I had afterwards a deed of trust on both of them.

Q. Then, when you sold Peugh square 909, and loaned him money, you took a deed of trust on one of the houses on G street, and when you discounted the notes relating to squares 910 and 911, you
283 took another deed of trust on the adjoining house on G street. Am I right?

A. I am not positive it was made first, but there were two transactions and a deed of trust on each house. One, I think, was for the purchase of squares 910 and 911, and the other for square 909 and some other property.

Q. Did you not advance money on the sale of squares 910 and 911?

A. I discounted the notes for M'r Bayliss, which I think enabled him to advance money to M'r Peugh. I believe that was understood when the sale was made, that the money was to come through me.

Q. Then the notes discounted by you represent both the purchase-money of squares 910 and 911 and a loan made by Bayliss to Peugh, according to the understanding?

284 A. Yes; I do not think I discounted all the notes.

Q. What was the amount of the loan represented by these notes discounted by you?

A. I do not recollect.

Q. Did you ever have any other transaction with Peugh in respect of the two houses on G street?

(Objected to.)

A. I did. After one set of these notes had been running some time, M'r Peugh came to me and said he had sold one house to Michael Thompson, the attorney, and he wanted the deed of trust released to take up the notes. He did take up the notes by paying me some two thousand dollars or more—perhaps more, I don't recollect—and giving another note, substituting another note for twenty-nine hundred
285 dollars, or a sum thereabouts, which he secured by deed of trust on other property.

Q. Then these three transactions were all you ever had with M'r Peugh touching the G street property.

A. These are all I remember.

WILLIAM B. TODD,
By A. S. WORTHINGTON,
Examiner.

Without closing the cross-examination of this witness, adjourned to meet at same place at 3 o'clock on Tuesday, Oct. 15, '72.

A. S. WORTHINGTON,
Examiner.

Met pursuant to adjournment.

Present, the plaintiff and defendant, M'r Stanton, of plaintiff's counsel, and M'r Davidge and M'r Norris, defendant's solicitors.

WILLIAM S. HALLIDAY, a witness produced, sworn, and ex-
286 amined on behalf of the plaintiff, deposes as follows:

My name is William S. Halliday; I am fifty years of age; I live at 906 20th street in this city; and am a broker.

Examination-in-chief by M'r Stanton:

Q. Do you know the handwriting of Henry S. Davis, the defendant, from having seen him write?

(Objected to as leading. Question withdrawn.)

Q. Do you know the handwriting of Henry S. Davis?

A. Yes.

Q. What opportunities have you had for knowledge of it?

A. I have seen it very often.

Q. I will ask you to look at Exhibit I appended to deposition of Henry S. Davis in this cause and state whether or not the name H. S.
287 Davis on the back of it is or is not, in your opinion, in M'r Davis' handwriting.

A. I should say it was.

Q. I will ask you to look at Exhibit K, appended to the same deposition, and state whether or not the name H. S. Davis is or is not, in your opinion, in M'r Davis' handwriting.

A. I think it is.

Cross-examination by M'r Davidge:

Q. Have you ever seen M'r Davis write?

A. Yes, sir.

Q. When did you last see him write?

A. I do not know exactly the date, but I should think within six months or a year.

Q. What did he write?
A. I have seen him write his name and other things.
Q. How often have you seen him write?
288 A. I cannot tell; a great many times—a great many times.
Q. When did you first see him write?
A. I think it has been twelve or fourteen years.
Q. State what opportunities you have had of knowing the handwriting of Henry S. Davis. State when, where, and under what circumstances you have seen him write or seen his handwriting.
A. I have received a good many checks from him; have seen him write them.
Q. Are those all your opportunities of knowing his handwriting.
A. Well, I do not know.
Q. I ask you if these are all your opportunities of knowing his handwriting? If there are any others state them.
A. He has written in my presence repeatedly besides that.
289 Q. What did you ever see him write in your presence?
A. I cannot name every article that he wrote. I have seen him write orders and so on.
Q. What order did you ever see him write?
A. An order to pay money. I do not recollect exactly.
Q. Was it an order in your favor?
A. I do not recollect about that.
Q. What letter did you ever see him write?
A. I saw him write a letter to a lady in the West. He showed it to me afterwards. That is as near as I can recollect.
Q. Is that the only letter you ever saw him write?
A. I do not recollect about that. I can't recollect any other just now.
290 Q. Then you recollect only one letter that you saw him write?
A. That is all I can recollect just now distinctly.
Q. How long ago was that written?
A. Within a year.
Q. With a pen or pencil?
A. Pen.
Q. Name any order you ever saw him write.
A. I do not think I can.
Q. What makes you think you have seen write orders, then?
A. Well, I have received orders from him; I do recollect of receiving orders from him to sell property where I was trustee.
Q. How many?
A. Well, I can't tell.
Q. Can you recall one?
A. Yes, I can recall one, I suppose.
Q. Do you suppose you can recall more than one?
A. Yes.
291 Q. How many more?
A. I could not tell you exactly.
Q. Can you recall any more than one?
A. I might; yes.
Q. Can you now do so?
A. Yes.
Q. What order is it?
A. One for property on Capitol Hill; one for property on I street.
Q. Have you got those orders?
A. I could not find them, I think. I do not file them.

Q. And you can recall only two orders; am I right?
A. That is as far as I can recollect now.
Q. Did you ever see his signature under circumstances that rendered it necessary for you critically to examine it?
A. No, sir.
292 Q. Then, you have simply a general idea of his style of writing.
A. Yes.
Q. Did you see Exhibits I and K before they were shown to you under examination?
A. I think I did. I am pretty certain I did.
Q. When, where, and who showed them to you?
A. They were shown in this office within a week, I think, and by M'r Peugh.
Q. You say that you first saw him write about twelve years ago. What did you see him write at that time?
A. Checks.
Q. More than one?
A. I think so—yes—can't tell how many.
Q. Can you recall more than one?
A. I do not recollect what particular ones, and all that. I have seen them.
Q. How many?
293 A. I do not know.
Q. Did you tell M'r Peugh what you have here stated, that you only had a general idea of the writing of M'r Davis?
A. Yes; I never heard it questioned. I told him so. I understood this was probably in question now.
Q. You understood, then, the proof to be given by you was merely formal, and that no controversy attached to the signatures?
A. I cannot say it was exactly that—pretty nearly.
Q. You did not understand the signatures to be seriously controverted, did you?
A. No, sir; when my examination commenced I did not think there was serious controversy; that is what I meant to say. I mean the examination now going on.
294 Q. M'r Peugh, the defendant, never told you that these signatures were denied by M'r Davis under oath, did he?
A. He mentioned something to that effect. I don't think he did it exactly in that way, but pretty nearly.
Q. Did you not tell M'r Peugh that there were many persons who knew the signature of M'r Davis much better than you?
A. I think so—yes, I think I did, or as well anyhow.

Redirect examination:

Q. Where is your office?
A. On Seventh street, in the Intelligencer building.
Q. Where is M'r Davis' office?
A. I do not think he has got any.
Q. Who is your landlord?
A. Well, I have three.
Q. Who are they?
295 A. I think the two Galts and M'r Davis, the defendant here present.
Q. Does M'r Davis use your office occasionally for business purposes?
A. Not that I am aware of. M'r Davis is a friend of mine, and comes into my office frequently.

Q. From the knowledge which you have of M'r Davis [illegible] is there any doubt in your mind as to the signatures presented to your attention being in his handwriting?

(Objected to, because the witness has already been examined in chief, and that examination closed, and this question is not called for by any matter brought out on cross-examination; and because, further, the witness is interrogated merely as to matter of opinion.)

A. In answer to that I would say that I would not, unless there was a doubt about it by others.

296 Recross examination.

Q. Have your relations to M'r Davis as landlord afforded you any opportunities of knowing his handwriting. Have you ever had any dealings with him as landlord in which you saw his handwriting?

A. No.

Q. Suppose the signatures were presented to you and you were informed they were denied and doubted by others, what then would be your opinion in relation to them?

(Objected to because the question contains an hypothesis not applicable to the present case. The defendant having been asked in his cross-examination in the present case in reference to the signature on the back of Exhibit I whether he would swear that it was not his sig-
297 nature, he replied, "No," and in reply to question as to the signature on Exhibit K not having given a positive denial.

M'r Davidge here desires the witness to discard from his mind any impression created by the declarations of M'r Stanton, and to answer the question as propounded to him.)

A. That is what I have said before, that my opinion would be shaken to that extent.

Q. If those signatures were offered to you in the course of business and you were informed they were denied, what then would be your opinion—would you act upon them?

(Objected to as inadmissible because, under the circumstances suggested in the question, a man would be influenced by other con-
298 siderations as well as by his own opinion of the genuineness of the handwriting.)

A. I would not.

Q. What would be your opinion?

A. In any case where a signature is doubted, knowing that I have seen many, very many, forgeries, I should not hesitate to discard it until I knew from the party that it was genuine.

WILLIAM S. HALLIDAY.

Sworn and subscribed to before me this 23d day of June, 1873.

A. S. WORTHINGTON,
Examiner.

Adjourned to meet at same place on Thursday, the 17th day of October, 1872.

A. S. WORTHINGTON,
Examiner.

THURSDAY, *October* 17, 1872.

Met as by adjournment.

Present, M'r Stanton and M'r Davidge, the plaintiff and the defendant.

299 By consent, adjourned till three o'clock on Saturday, the 19th day of October, 1872.

A. S. WORTHINGTON,
Examiner.

SATURDAY, *October* 19, 1872.

Met pursuant to adjournment.

Present, the plaintiff only. Adjourned to meet at same place at three o'clock p. m. on Friday, November 1, 1872.

A. S. WORTHINGTON,
Examiner.

FRIDAY, *November* 1, 1872.

Met pursuant to adjournment.

Present, the plaintiff and the defendant, M'r Stanton, of plaintiff's counsel, and M'r Davidge, of defendant's counsel.

ZEBULON M. P. KING, a witness produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

I am nearly sixty years of age, and reside in Washington City.

300 I am a merchant. I know both M'r Peugh and M'r Davis.

Examination-in-chief by M'r Stanton:

Question. Were you the purchaser at a tax sale in 1855 of square numbered 911?

Answer. I was.

Q. Did you receive a tax-certificate?

A. I believe I did.

Q. Was the property afterwards redeemed; and, if so, state by whom?

A. I have a recollection of M'r Peugh coming to my store and asking to have, I believe, this square; to let him have the certificate and he to pay me the money, stating that it was his property, or something of that kind. I did so.

Q. Were you paid; and, if so, by whom?

A. I was paid by M'r Peugh, if by anybody.

Q. Have you any doubt as to its being paid by M'r Peugh?

301 A. No, I guess not. I don't think I ever got anything from the corporation. I must have got it from him.

Q. Did you have any communication with M'r Henry S. Davis?

A. I do not recollect of ever having any.

Q. Look at Exhibit G, R. D. M., attached to the deposition of M'r Henry S. Davis, taken in behalf of the defendant in this case, and tell whether or not that is your signature, and whether or not said paper is the tax-certificate concerning which you have just testified?

A. That is my signature and this is the certificate.

Cross-examination waived by M'r Davidge.

After hearing the foregoing read to him by the examiner, the witness says that he desires to add to his testimony the following:

302 In answer to the 3d interrogatory he says: I cannot state positively whether I gave M'r Peugh the certificate or not; the interval of time is too great. But I think I stated when on the stand before that the one who held or owned the certificate must have paid me for it or else I would not have let it pass from my hands.

In answer to the 4th interrogatory he says: I would not like to say that M'r Peugh paid me, but if he became possessed of the certificate from me he must have paid me for it. M'r Davis also called, I believe

in reference to the same certificate. I cannot say positively, [illegible] who got it from my hands.

303 In answer to the 5th interrogatory he says: What I have said before will amend that. I would not like to say positively that M'r Peugh was the one or not.

In answer to the 6th interrogatory he says: I think I did. I think M'r Davis called at the store with reference to that certificate.

ZEBULON M. P. KING.

Sworn and subscribed to before me this 13th day of September.

A. S. WORTHINGTON,
Examiner.

M'r William B. Todd presents himself for cross-examination.

M'r Todd not having been present at the time to which his cross-examination was adjourned, to wit, October 15th, 1872, nor at the subsequent meeting, his cross-examination is resumed to day by consent.

304 Cross-examination of M'r Todd by M'r Davidge continued:

Q. I find a deed on record from you to John Couney, dated as recorded on the 4th of May, 1852, and showing the conveyance to him of square 908 for the sum of four hundred and ninety-eight dollars. Have you any recollection of that transaction?

(Objected to as inadmissible and irrelevant.)

A. I once owned that square and I believe I sold it to that person, John Couney. The time I don't remember—probably that deed is correct—the date of that deed I suppose is the time.

Q. Have you any reason to doubt that that deed correctly sets forth the consideration of the sale?

A. I have no recollection about the consideration.

305 Q. Have you any reason to doubt that the consideration, $498, is correctly set forth in the deed?

(Objected to on the ground already stated, and because said he has no recollection on the subject.)

A. I don't remember of any reason now. Sometimes a different consideration is put in the deed from the real by request of the purchaser, but I don't recollect that in this case the' was any departure from the general rule.

Q. You believe then that the amount stated was the real consideration, do you not?

(Objected to on the grounds already stated.)

A. I could ascertain, by referring to a list of property I had, what the real consideration was.

Q. What is your present belief?

306 A. My impression is that the amount was put in it that I sold it for. I have no particular recollection about it.

(Mr. Davidge requests the witness to get the information and furnish it at the next meeting.)

Q. I wish you would strive to recollect what amount of money was loaned to M'r Peugh when he purchased these squares, 910 and 911, and secured together with the purchase money on his property on G street, as you have mentioned. What, to the best of your recollection, was the amount of the loan made to him?

A. I think the amount agreed on between him and Baylies was about two thousand dollars ($2,000) cash.

Q. Have you any distinct recollection that that was the amount?

307 May not the amount have been three thousand dollars loaned?

A. I think not. The first money that was to be paid back by

M'r Peugh was the money advanced. I think the first note was the money that was advanced, if I recollect right; and that was to come back before Bayliss got his pay for the squares.

Q. Were you a bank director in the year 1857, and for several years prior thereto?

A. I believe I was. I was in 1857, and for several years before.

Q. At what bank?

A. The old Bank of the Metropolis.

Q. Did all the banks in this District suspend specie payments in the panic of 1857?

A. I think they did. I think the old banks did. The Bank of the Metropolis did, I think.

308 Q. What do you mean by the old banks?

A. I mean that their charters had expired and they were managed by trustees until Congress should renew their charters, which they never did. The property was put in the hands of trustees for the purpose of winding up.

Q. What other banks were there in 1857 in this District when the old banks which had been chartered by Congress, and whose charters had run out?

A. None, except private banks.

Q. Do you mean to say that private bankers did not suspend specie payments during the panic of 1857?

A. I do not recollect, as to that, whether Riggs did or not. They issued no notes—I believe had nothing outstanding.

309 Q. Do you not know that the banks generally throughout the country suspended specie payments during the panic?

(Objected to.)

A. That is my impression.

Q. Is that only an impression?

(Objected to.)

A. I think there was a general suspension throughout the country, with the exception of some few banks in the old cities.

Q. Now, am I to understand you as stating that the universal suspension of specie payments in this District and elsewhere did not have a most depressing influence upon real estate then used in this city?

A. I don't think it had a very depressing effect, as well as I can recollect.

Q. Do you profess to have any distinct recollection upon the

310 subject?

A. Well, I cannot say that I have—as to any depressing effect it had.

Q. Have you any distinct recollection that the panic had not a depressing effect?

A. I have generally observed when these panics come, real estate is the last thing to be effected by a moneyed crisis. I think it generally affects stocks and merchandise first, and it is a long time before the price of real estate is reached—before the depression takes place in real estate.

Q. I ask you whether you have any distinct recollection that the effect of the panic of 1857 upon real-estate values in this city was depressing?

A. I have no recollection as to any particular depression at that time.

Q. Or the absence of it?

311 A. Or the absence of it.

Q. You have, M'r Todd, been a large dealer in tax-titles in this District, have you not?

A. I don't know that I have been a very large dealer. I have bought some and obtained some tax titles and certificates.

Q. Have you not from time to time bought thousands of lots at tax-sales?

A. I hardly think so much as that. I do not know as I even have bought hundreds.

Q. Within the past ten years has a tax-sale ever taken place at which you have not bought some property?

A. I think there are some years that I have not attended.

Q. Is there any there that you have not attended in person or through some agent?

312 A. It is quite likely that I have either been there myself or had some one there. Sometimes I would not buy much.

Q. And at other times you would buy many lots, would you not?

A. Yes, sir.

Q. Now, you say that you do not recollect the effect of the panic of 1857, nor indeed that it had any effect. Can you now tell me why you think that these squares 910 and 911 in that year were worth as much as five cents a foot?

(Objected to because the first part of the question assumes that the witness has stated what in fact he did not state—his testimony being that, according to his remembrance, commercial panics did not depress the price of real estate in Washington, and that the particular

313 panic of 1857 did not have such effect.)

A. I think the square fronting on H street was worth five cents, and the one north of it four cents at that period.

Q. You have not answered my question, but never mind. Do you think those squares were worth as much in 1857 as they were in 1854?

A. Yes, I think they were worth more.

Q. Notwithstanding the panic?

A. Notwithstanding the panic.

Q. When from a monetary panic values are disturbed, does not outlying speculative property experience the effect more quickly and sensibly than property in the city?

A. I should think it would be.

NOTE.—Before the cross-examination of this witness to day com-

314 menced, he stated that there were some corrections he desired to make in his previous testimony. The examiner informed him that he would have an opportunity to correct his testimony before signing it.

Counsel for the plaintiff desires that whatever correction the witness wishes to make (of the nature of which counsel says he has no knowledge whatever) shall be made before the redirect examination is proceeded with.

WILLIAM B. TODD,
By A. S. WORTHINGTON,
Examiner.

Adjourned to meet at same place at 3 o'clock on Tuesday, the 5th day of November, 1872.

A. S. WORTHINGTON, *Examiner.*

315 TUESDAY, *November* 5, 1872.

Met pursuant to adjournment. Present, M'r Stanton, of plaintiff's counsel, and M'r Davidge, of defendant's counsel.

Without taking any testimony, adjourned to meet at same place at 3 o'clock on Friday, November 8, 1872.

A. S. WORTHINGTON, *Examiner.*

FRIDAY, *November 8th*, 1872.

Met pursuant to adjournment. Present, the plaintiff and M'r Stanton, his solicitor.

M'r William B. Todd presented himself for further examination. After waiting from three o'clock till after half past three for the defendant and his counsel, the redirect examination of M'r Todd was proceeded with by M'r Stanton.

Redirect examination of W'm B. Todd:

316 Q. On the last day of your examination you stated that you desired to make some corrections in your former testimony. I will be obliged to you if you will make that correction now, before your redirect examination is proceeded with.

A. I would like to read over the testimony I gave before.

Q. Without reading it over or referring to the notes of your testimony, will you please state to what matters your desired corrections relate, and, as far as you can, of what they consist?

A. I remember one of the points which I desired to correct was this: In giving the statement of the amounts and numbers of notes which I received from M'r Bayliss—M'r Peugh's notes—in the transaction of
317 the two squares 910 and 911, which were received from M'r Bayliss on the two squares, and the money loaned, I stated that there were six notes of eleven hundred and some fifty or sixty dollars each. I afterwards went to the record-office and examined the records of that transaction and found that I was mistaken; that instead of six notes of that amount there were only four of that amount and one of two thousand dollars, making five notes in all, instead of six. The first note was for two thousand dollars at twelve months, and the others for $1,168.25 each, at 18, 20, 22, and 24 months. The other correction I wish to make was in the transaction wherein I sold to M'r Peugh two squares of ground, number 909 and number north of 931. I think I stated that M'r
318 Peugh applied to me for a loan of money in that transaction, and by referring to the records of this transaction also my memory was refreshed, and I recollect that that transaction was made entirely through M'r Bayliss, by him, with M'r Peugh. I don't think that M'r Peugh applied to me or that I saw him until after I had advanced the money and received the notes. The amount of the notes of that transaction and the money secured I can give you. They are dated the 16th of February, 1857, and are secured on part of lot 2, in square 429; one note at nine months for two thousand dollars, one for twelve months for $1,123.74, one at 15 months for $1,974.26, making $5,098, all in favor of B. Bayliss. I believe those are the only two corrections I wish to make.

319 Q. Do you know what was the rate per foot of the two squares 909 and 931?

A. No; I don't recollect. The amount was about eighteen hundred and some odd dollars, I believe. My impression is it was more of a lumping sale, as we call it. The Baltimore and Ohio Railroad cut both squares diagonally in two. A considerable portion of both squares was condemned for the use of the railroad, which impaired their value very much. I should think in the two squares there must have been some seventy or eighty thousand square feet, railroad and all; but perhaps not more than forty or fifty thousand square unoccupied by the
320 railroad or not condemned by that company. I don't think anything was said about the price per foot.

Q. Were or were not the various notes of M'r Peugh, concerning which you have testified, paid?

A. All that I received from Baylies were paid. I think there was one or two that did not come into my possession—one I am quite certain. I am positive they were all paid. I authorized the release of the property when they were all paid, holding the last note.

(Mr Davidge here entered and assigned as a reason for not being present that he was engaged in a case in the Supreme Court of the United States that was actually under argument until three o'clock.)

Q. Do you remember the date of the transaction in respect to squares number 910 and 911?

321 A. I think it was in 1855. I examined the deed and deed of trust at the record-office and took the date down from them. I don't know as I have anything to fix the date without referring to the record. It was the 22d of May, 1855. The deed was recorded 24th of May.

Q. You were interrogated in your cross-examination regarding the comparative of real estate in 1854 and 1857. Do you know whether, between those dates, H street was opened or extended, and what the effect of said opening or extension was upon the two squares 910 and 911?

A. The street was opened—a good graveled roadway—I think, before 1857. I am not positive about an earlier date than that; about

322 1858, I think, the pavement footway was put down and carried out to the Boundary on each side. This, undoubtedly, improved the value of those squares. It had the effect to divert the Benning's bridge and the Bladensburg pike travel from the old route to H street. The old route was over Maryland avenue.

Q. You were asked in your cross-examination concerning your experience in tax-sales and tax-titles. Have you any knowledge of tax-sales in 1837—of the estimation in which they were held as claims against property?

(Objected to as irrelevant.)

A. I have none.

Q. You speak in your cross-examination of acting upon the advice of counsel, in respect to an outstanding tax-title, in reference to a

323 transaction in real estate. Do you know in what esteem the opinion of W. H. Ward, esq., upon a question of that kind is held?

A. Well, sir, he is held good authority upon that question.

(Question and answer objected to as irrelevant.)

Q. If the financial crisis of 1857 had exercised a m'ked depressing effect upon the values of real estate in this city, would you or would you not be likely to remember the existence of such depression?

(Objected to as argumentative and matter of opinion. The facts ought to be stated to let the court draw the opinion.)

A. I suppose I should, as I was considerably engaged in real estate.

Q. Would you or would you not have deemed the sale of squares

324 910 and 911, with an illegal and void tax-title outstanding, for two thousand dollars, in 1857 or 1858, being at the rate of about a cent and a third per foot, an usual fair sale?

(Objected to because it calls for the opinions of the witness, who has already testified to facts, and because, further, it assumes facts not in evidence.)

A. I should not. I should consider them great sacrifice if sold at that price.

Q. Do you know the date of the sale to Couney of square 908, concerning which you have testified in your cross-examination?

A. Yes. I promised to make a memorandum of that. I have the

memorandum in my pocket now, I think. M'r Davidge requested me at the last meeting to look. [Examines papers.] I find I sold
325 the square to John Couney, in 1852, for some four hundred and ninety and some odd dollars. It was a little less than $500. My impression is that the price corresponded with the price M'r Davidge mentioned that day—four hundred and ninety and three or four odd dollars. I have mislaid the memorandum; that, however, is about the substance of it. It was a little less than $500 I sold it for.

Q. What is the situation of square number 908, and its advantageousness of location, as compared with the squares 910 and 911?

A. It is located the last square in that range; it is on Boundary street. At that time it was rather isolated; there were no streets open leading to it. It was of much less value than the squares you mention.

326 Q. Do you know what was the rate, per square foot, at which you sold square 908?

A. I don't think it was over a cent—about a cent a foot. I think it might have been a fraction over. There is less than 50,000 feet in it, I think.

Q. Do you remember how the values of real estate in the neighborhood of H street, and of squares 910 and 911 compared in the years 1855 and 1858?

A. They were worth more in 1858 than in 1855. I think the value of property there was constantly rising from the time H street was first opened.

Q. Can you mention any circumstances leading to this rise in value?

A. I think from the year 1852 forward there was marked
327 change in the value of real estate; after the corner-stone of the Capitol extension was laid, and the passage of the compromise bill—Mr. Clay's—it had a very marked effect in stiffening prices of real estate here. There seemed to be a steady advance from that period.

Q. Can you mention any circumstances leading to a rise in value during the in the value of real estate in the locality already indicated; that is to say, property contiguous to and adjacent to H street, and in the neighborhood of squares 910 and 911?

A. I don't recollect any in that immediate neighborhood, or very adjacent. I remember some sales I made further off from these
328 points—four, five, or six squares, I might say, from that point.

WILLIAM B. TODD,
By A. S. WORTHINGTON,
Examiner.

Adjourned, to meet at same place, at three o'clock, on Wednesday, the 11th day of June, 1873.

A. S. WORTHINGTON,
Examiner.

WEDNESDAY, JUNE 11TH, 1873,
632 F street, Washington, D. C.

Met pursuant to adjournment. Present, the plaintiff and the defendant; E. L. Stanton, esq., of plaintiff's counsel, and John E. Norris, esq., of defendant's counsel.

EDWARD W. HALE, a witness of lawful age, produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

Being examined by M'r Stanton, for the plaintiff, he says:

329 M'r name is Edward W. Hale. I reside in Washington, D. C. I am paying-teller in the United States Treasury. I have a slight

acquaintance with M'r Peugh, the plaintiff. I do not know the defendant in this case.

Q. Does your business call upon you to investigate questions of the genuineness of signatures?

A. In the same way that any position of that sort does, by paying hundreds of checks every day, bearing signatures, and being held to a responsibility for their being correct.

Q. For what period has your business required you to exercise judgment of this kind?

(Objected to.)

A. I have been for seven years in my present position, and
330 all my life-time, since I was twelve years of age, I have been in banks and other offices where I have been handling documents bearing signatures.

(Answer objected to.)

Q. Have you ever testified in courts as an expert in reference to the genuineness of signatures or handwriting?

(Objected to.)

A. In two or three cases prior to this one, and where parties have sent to the office for testimony of that character, I have been sent by the head of the office. In this case M'r Stanton was referred to me by the chief clerk in the office of the Treasurer of the United States, I think. The Treasurer has sent me to Maryland on three occasions to give evidence where there was a question of signature involved.

331 (Answer objected to as not responsive to the question, and not relevant either.)

Q. Have you not acquired a facility for detecting, by comparison or otherwise, signatures which are or are not genuine?

(Objected to.)

A. That is asking me to judge of my own merits. I rely upon my judgment in making payments, and the Treasurer does, or he would not keep me there.

(Answer objected to.)

Q. Have you or not examined the signature of H. S. Davis upon Exhibits B, C, D, E, H, I, and K, appended to the deposition of Henry S. Davis in this case, sufficiently to acquaint yourself with said signature so as to express an opinion as to the genuineness of the signature
332 on said Exhibits I and K, the other signatures being conceded to be genuine?

(Question objected to.)

A. I have examined them previously to to-day, and thought then they were all written by the same person, and I think so now. I can only express my opinion.

Q. State at whose request you made this examination.

A. At your request [addressing M'r Stanton].

Q. And whether or not before the expression of your opinion upon the subject you had any intimation from me or anybody else as to whether I maintained the genuineness of such signatures or the reverse.

(Objected to.)

A. None at all.

Being cross-examined by M'r Norris for the defendant, he says:

Q. How old are you?

333 A. Thirty-one years.

Q. In what banking-house were you prior to going into the Treasury Department?

A. The Oswegatchie Bank, at Ogdensburg, New York. I was there for several years.

Q. How old were you when you were there, and how long were you there?

A. I was sixteen when I went there, and was there five years.

Q. What was your position there?

A. I filled several positions. I was teller, book-keeper, and discount-clerk at different times. Previous to going into that institution I was in the office of a lawyer and insurance agent, where I handled checks, insurance policies, and receipts, and other documents bearing signatures.

334 Q. What was your position when you went into that bank?

A. I was bookkeeper.

Q. How long bookkeeper?

A. I held the position of bookkeeper during all the time I staid there, but I filled the other places and performed the duties belonging to them at various times. I was all the time constantly handling checks, notes, and other papers of that kind, where I had to remember and familiarize myself with such documents.

(Latter part of answer objected to, as irrelevant, by M'r Norris.)

Q. Was there a teller in the bank during the time you were there?

A. There was.

Q. Did you do anything more than attend to that business when he was absent?

335 A. When he was absent—every day, though—a portion of every day almost.

Q. Was there a discount clerk?

A. Not regularly.

Q. What other banks or banking-houses were you in?

A. I came from there to the Treasury when twenty-one years of age, and have been in the Treasury since.

Q. Is it any part of your duty as an officer in the Treasury Department to examine and detect signatures whether genuine or not? If so, state to what extent that duty goes.

A. It is my business to pay all drafts drawn on the Treasury by its disbursing officers, and to examine and pass upon the signatures and endorsements on them.

336 Q. Has it ever happened to you that a spurious signature passed through your hands that was paid?

A. I believe not in any case where I relied on the signature itself. I will explain that by saying that sometimes I pay upon the responsibility of an endorsement following another. In such a case, the teller is not supposed to know the original endorsement; he relies upon the party to whom he pays, of course. He may have no knowledge or familiarity with the preceding signatures.

Q. Has it ever happened to you that a spurious signature passed through your hands that was paid?

A. I have already answered the question fully and explicitly.

337 Q. I will put the question in another form. Have you ever paid money out as teller upon paper and it afterwards turned out that some of the signatures upon it were forgeries?

A. Upon paper where an endorsement afterwards turned out to be a forgery, I have; but I paid upon my knowledge of a second endorser, and did not claim to know the first endorsement, and could not know it.

Q. How long have you been acting teller in the Treasury Department?

A. Seven years. For three years previous to that I held the position of bookkeeper, corresponding clerk, and assistant teller.

Q. During that time have you ever seen the handwriting of Henry S. Davis, except the papers that have been handed to you?

A. Not that I remember.

Q. How do you form your judgment, then, as to the genuineness
338 of the signatures on Exhibits I and K, except by comparison?

A. My judgment, as already expressed, was based upon an examination of all the signatures, and I think they were all written by the same person. I can state why I think so, if you desire it.

Q. Did you form that opinion in any other way than by comparison of handwriting, having been shown certain ones said to be genuine and the others in dispute?

A. No, sir, of course not. I could not have formed it in any other way, having no knowledge of the handwriting.

Q. Were all these signatures shown to you at the same time?

A. Yes, sir.

Q. Was it stated to you at the time that some of them were
339 disputed as genuine; and, if so, which?

A. I think it was stated to me that two of them were in dispute, and that certain others were admitted to be genuine. I don't believe I can state distinctly which of the two it was, but I think it was two that were in dispute.

EDWARD W. HALE.

Sworn and subscribed to before me this 23d day of June, 1873.

A. S. WORTHINGTON,
Examiner.

SAMUEL A. PEUGH, being recalled and examined as a witness in his own behalf, deposes as follows:

Being examined by M'r Stanton, of his counsel, he says:

Q. Look at Exhibits I and K, appended to the deposition of Henry S. Davis in this case, and state what knowledge, if any, you have
340 respecting said papers?

(Question objected to as having already been gone into in examination-in-chief.)

A. I have examined Exhibits I and K, as filed in this case, being checks given by me in person to Henry S. Davis in payment for the interest charged by him for the loan made to me secured upon squares No. 910 and No. 911; each check being given for the use of the money for sixty days.

(Answer objected to for the reason that there was no such loan; that the property was conveyed under a deed in fee.)

Q. When were said checks given by you to M'r Davis?

A. On or about the day of their date; most likely the precise day of their date.

341 Q. Afterwards did said checks come into your possession, and if so, how?

(Objected to.)

A. In the settlement of my bank account with M'r Smithson, upon whose bank the checks were given; they were returned to me as checks usually are in the settlement of bank accounts, along with a series of other checks.

Q. Are you acquainted with the signature of Henry S. Davis?

A. I am.

Q. State the means of your knowledge.

A. In reference to these particular exhibits, M'r Davis endorsed one of them in my presence, if not both. I know his handwriting just as I would a man's face.

Q. Have you seen him write or seen his signature?

342 A. I have seen him write and have seen his signature.

Q. Frequently, or not?

A. Frequently.

Q. State whether or not, in your judgment, the signatures H. S. Davis on said Exhibits I and K are genuine.

A. In the one case I know it to be genuine, and in the other I believe it to be from the checks coming to me from the bank in the usual form.

Q. Apart from its being returned to you in said manner, can you or not, upon your knowledge of his handwriting, express an opinion as to the genuineness of said signature which he did not write in your presence?

A. I would about as readily decide his signature as his face
343 from M'r Norris'; and it is my judgment it is genuine.

(Counsel for defendant reserves the right to cross-examine this witness hereafter.)

Adjourned to meet at same place at three o'clock on Friday, the 13th day of June, 1873.

SAM'L A. PEUGH.

Sworn and subscribed to before me this 23d day of June, 1873.

A. S. WORTHINGTON,
Examiner.

FRIDAY, *June 13th*, 1873.

Met pursuant to adjournment. Present, the plaintiff and the defendant; M'r Stanton, of plaintiff's counsel, and M'r Norris, of defendant's counsel.

Cross-examination of the plaintiff deferred till next meeting by counsel.

344 FREDERICK W. MOFFAT, a witness produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

My name is Frederick W. Moffat; I am 38 years of age; I reside in Georgetown, District of Columbia, and am receiving teller in the United States Treasurer's office—that is, I am acting as such, and have since 1864.

Being examined by M'r Stanton, of plaintiff's counsel, he says:

Q. Does your occupation give you facilities for ascertaining the *the* genuineness of signatures?

(Objected to.)

A. I think it does.

Q. In what manner?

A. Endorsements on checks and drafts, and other things per-
345 taining to the government. My experience here has not been so extensive as it has been in other places.

(Answer objected to.)

Q. Where else, and in what capacity, and how long, have you been engaged in similar duties?

A. In Albany, New York, about fourteen years. I was bookkeeper there, and, of course, had to examine checks, and became perfectly familiar with the handwriting of the customers of the bank. I was in the Bank of Albany, New York.

(Answer objected to.)

Q. How long have you held your present position in the [illegible] the United States.

A. Since January, 1864.

Q. Have you examined Exhibits B, C, D, E, and H, appended to the deposition of Henry S. Davis in this case, and made yourself ac-

346 quainted with the signature of H. S. Davis, borne upon said exhibits?

A. I have.

Q. Have you examined the endorsements of the name of H. S. Davis upon Exhibits I and K, appended to said deposition?

A. I have.

Q. Look again at said exhibits, and state whether or not, in your judgment, the handwriting of said endorsements upon said last-named two exhibits is the same as that in which the same name is written upon the other exhibits above referred to.

A. It is my opinion that one hand wrote them all. It is merely an opinion; I cannot give any more.

Q. By that do you mean that you have no personal knowledge who wrote said signatures?

347 A. I have no personal knowledge at all.

Cross-examination by M'r Norris:

Q. Do you know the parties to this suit?

A. No, sir; neither of them.

Q. How came you to be a witness here?

A. I was solicited by M'r Stanton to examine these signatures.

Q. Did you see those signatures before you came to this room to-day?

A. Of course I did.

Q. Where, and when, and under what circumstances?

A. I do not remember the day. About two or three weeks ago, I came at M'r Stanton's request to examine them.

Q. Were all the signatures that have been referred to to-day pointed out to you, and was it stated that some of them were disputed, and if so, which?

348 A. I think there was one or two; I don't remember now. One, I think, was claimed to be a forgery.

Q. Examine Exhibits I and K, and state whether there is not a difference in the handwriting of those two signatures.

A. I cannot see the slightest.

Q. In forming your opinion as to the handwriting in Exhibits I and K being the same as in Exhibits B, C, D, E, and H, what is the basis of your opinion?

A. The line at the bottom and the dot after the middle letter are the same all the way through.

Q. Is that the basis?

A. That is the basis.

Q. Then, have you any other mode of determining the genuineness of the signatures to Exhibits I and K than by a comparison of handwriting?

349 (Counsel for the complainant requests the commissioner to add to the last answer the remarks made by the witness in response to said inquiry as to the way in which the genuineness of handwriting was determined upon.

M'r Norris, one of the solicitors for the defendant, here enters his objection to the counsel for the complainant interfering with the witness

on cross-examination, which required an answer, and no objection was made to the question.

The examiner did not understand the remarks of the witness referred to by M'r Stanton, and therefore made no entry of them and can make no such entry.

350 The counsel for the complainant requests the commissioner to ask the witness to repeat said remarks, which really constitute part of the answer to said question.

M'r Norris objects to the proposition to the commissioner to call upon the witness to repeat remarks which he did not make; and if he did, until he answers the question which is propounded.

The commissioner states to the witness that if anything has been omitted from his testimony which he desires to have put down it is his privilege to have it put down.

M'r Norris objects to this statement by the commissioner to the witness.)

The witness resuming:

I have given all the facts I know.

Question by Mr. Norris:

351 Then have you any other mode of determining the genuineness of the signatures to Exhibits I and K than by a comparison of handwriting.

A. I have not other than just what passes before me in the examination of the papers.

Redirect, by M'r Stanton:

Q. When, at my request, you first examined those exhibits had you, from myself or any one else, any intimation as to whether I maintained or controverted the genuineness of the signature or signatures said to be in dispute.

A. I think that I was asked to look at the signatures and pass my opinion upon them, and I said, after looking at them, that to the best of my judgment they were all written by one hand.

(Answer objected to by M'r Norris as not responsive.)

352 Witness resuming, says: I think there was one or two of the signatures claimed to be a forgery.

Q. Did you know whether I maintained or controverted the genuineness of such signature or signatures?

A. I did not. I did not know which side you [addressing M'r Stanton] were on.

Q. Do you desire it to be understood that in forming the opinion already expressed by you concerning this handwriting, you rely exclusively and solely upon the presence of the dot and the mark underneath?

A. Upon these, and also the general formation.

Q. How do the general characteristics of the signature compare upon all these exhibits?

353 (Objected to as already being answered.)

A. They are all the same.

FRED. W. MOFFAT.

Sworn and subscribed to before me this 27th day of June, 1873.

A. S. WORTHINGTON,
Examiner.

Adjourned to meet at the same place, at three o'clock, on Wednesday, the 18th day of June, 1873, when the plaintiff is to be cross-examined.

A. S. WORTHINGTON,
Examiner.

WEDNESDAY, *June* 18th, 1873.

Met pursuant to adjournment. Present, M'r Stanton, of plaintiff's counsel, and Mess'rs Davidge and Norris, of defendant's counsel.

The plaintiff appears and offers himself for cross-examination.

354 Cross-examination of the plaintiffs waived by M'r Davidge.

M'r Stanton announces that the testimony of the plaintiff is here closed, reserving, however, the right to adduce rebutting testimony and such evidence as may be hereafter discovered.

Adjourned.

A. S. WORTHINGTON,
Examiner.

I certify that the foregoing depositions were all taken by me, at the times and places specified, in short-hand, in the presence of and from the statements of the several witnesses; that they were afterwards written out by me from my short-hand notes, and then, except in two instances, read over to the witnesses by me in the presence of counsel for the respective parties, or after due notice to said counsel,

355 and by said witnesses respectively signed in my presence; that before taking said depositions each witness was first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matters whereof he should be examined; that I am not of counsel nor attorney for either of the parties to said cause, nor in any way interested in the event thereof; and that my fee for taking the foregoing depositions, amounting to one hundred and sixty dollars ($160), has been paid to me by

I further certify that the two cases above excepted from the general statement that the depositions were by me read over to the witnesses are those of the witnesses William B. Todd and William P. Smithson;

356 that said William B. Todd died without having been called upon to sign his deposition, and that his name was signed to his deposition after his death by the examiner; that said William P. Smithson's deposition, after being transcribed, was sent to him by mail, at New York City, by the examiner, in accordance with a written stipulation of the respective counsel in the case, which stipulation is hereto appended; and that said deposition of William P. Smithson was received back by mail by the examiner, duly signed, a few days after it was so sent to the witness.

Given under my hand and seal, at Washington, D. C., this 17th day of September, 1873.

[SEAL.] A. S. WORTHINGTON,
Examiner in Chancery, Supreme Court of the District of Columbia.

357 In the supreme court of the District of Columbia.

SAM'L A. PEUGH
v.
HENRY S. DAVIS. } No. 1713. In equity.

Mess'rs DAVIDGE and NORRIS, defendant's solicitors:

GENTLEMEN: Under the stipulation between counsel in this case, the depositions taken in short-hand by me are to be read over to the witnesses by the examiner in the presence of the respective counsel after being transcribed. I have notified the witnesses to attend at my office

(362.F) at three o'clock to-morrow (Friday), for the purpose of reading and signing their depositions. Please attend.

A. S. WORTHINGTON,
Examiner.

JUNE 19, 1873.

Service acknowledged.

JOHN E. NORRIS,
Of Counsel for H. S. Davis.

JUNE 19*th*, 1873.

358 In supreme court of the District of Columbia.

PEUGH v. DAVIS. } In equity. No. 1713.

It is agreed that the commissioner may send by mail to W. P. Smithson his deposition, to be read over and subscribed by him.

NORRIS & DAVIDGE.
E. L. STANTON.

359 EXHIBIT G. S., No. 1.

Memorandum of agreement entered into this eleventh day of October, eighteen hundred and sixty-five, between Henry S. Davis, of the first part, and George Henry Simms, of the second part, both of the city of Washington, D. C., witnesseth:

That the said Henry S. Davis, for and in consideration of the monthly rental hereinafter named, hath leased unto the said George Henry Simms square numbered nine hundred and eleven (911), in the said city of Washington, from month to month, commencing on the 1st day of July, 1865, for the monthly rent of one dollar and fifty cents, payable on the first day of each and every month.

And the said George Henry Simms on his part hereby agrees to pay to the said Henry S. Davis the monthly rent of one dollar and fifty cents for said square, payable on the first day of each and every month, beginning on the 1st day of July, 1865. And he hereby further agrees to vacate the said premises upon a written notice from the said Henry S. Davis of thirty days, yielding peaceable possession of the said premises at the expiration of the term of said written notice.

And it is further understood and agreed between the parties hereto that, at the expiration of this lease as aforesaid, the said George Henry Simms shall have the right to remove his frame building from the said premises.

Witness the hands and seals of the parties hereto this 11th day of October, 1865.

Done in duplicate.

H. S. DAVIS. [SEAL.]

GEORGE HENRY his + mark. SIMMS. [SEAL.]

Signed & sealed in presence of—
CH. H. WINDER.
J. H. HILTON.

360 Received of the above-named George Simms one dollar and fifty cents, being full for rent of [illegible] premises from 1st July, 1865, to 1st October, 1865.

Signed in duplicate this 11th October, 1865.

H. S. DAVIS.

EXHIBIT G. S., 2.

WASHINGTON, 13th Nov., 1865.

Rec'd of George Simms one dollar and fifty cents, being in full for rent of square nine hundred and eleven for the month of October.

CH. H. WINDER,
For Henry S. Davis.

EXHIBIT G. S., 3.

WASHINGTON, 2d Dec., 1865.

Rec'd of John Simms one $\frac{50}{100}$ dollars for rent of square 911, for month of Nov., '65.

CH. H. WINDER,
For Henry S. Davis.

EXHIBIT G. S., 4.

WASHINGTON, *Feb'y 23d*, 1866.

Rec'd of George H. Simms three dollars, being in full for rent of square 911 up to 1st March, 1866.

CH. H. WINDER.

EXHIBIT G. S., 5.

WASHINGTON, 17th *Jan'y*, 1866.

Rec'd of George Simms one $\frac{50}{100}$ dollars in full for rent up 1st inst., of square 911.

CH. H. WINDER,
For H. S. Davis.

361 EXHIBIT W. B. T., No. 1.

Deed of trust.—Recorded 17th February, 1857.

SAM'L A. PEUGH & WIFE
to
W'M H. WARD & JA'S Y. DAVIS.
} Liber J. A. S. No. 129, fol. 65.

This indenture, made this sixteenth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, between Samuel A. Peugh and Caroline S., his wife, of the city of Washington, in the District of Columbia, of the first part, and William H. Ward and James Y. Davis, of the said city of Washington, of the second part;

Whereas the said Samuel A. Peugh is indebted unto Buckner Baylis, of the said city, in and for the sum of five thousand and sixty dollars, and hath made and delivered to said Buckner Baylis three certain promissory notes, bearing even date herewith, signed by
362 said Samuel A. Peugh, and made payable with interest from date to the order of said Buckner Baylis in the manner following:

one of the said notes, being for the sum of two thousand dollars, is made payable as aforesaid nine after date; and one of the said notes, being for the sum of eleven hundred and twenty-three dollars and seventy-four cents, is made payable as aforesaid twelve months after date; and one of said notes, being for the sum of nineteen hundred and seventy-four dollars and twenty-six cents, is made payable as aforesaid fifteen months after date; and in order to secure the prompt payment of said notes and the interest thereon, the said Samuel A. Peugh doth here execute these presents:

Now, therefore, this indenture witnesseth, that the said Samuel
363 A. Peugh and his said wife, for and in consideration of the premises aforesaid, and further the sum of one dollar, in lawful money of the United States to them in hand paid by the parties of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, enfeoff, release, and convey unto the said W'm H. Ward and James Y. Davis, and the survivor of them, his heirs and assigns, all that certain piece or parcel of ground situate and lying in the said city of Washington, and known and described as being a part of lot numbered two (2), in square numbered four hundred and twenty-nine (429), and being described as follows: beginning for the same at a point
364 on the line of north G street, twenty (20) feet eastwardly from the southwestern corner of said lot, and thence running east along said street twenty (20) feet, thence north one hundred (100) feet to the rear line of said lot, thence west twenty (20) feet, and thence south one hundred (100) feet to the place of beginning.

Together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said piece or parcel of ground and premises.

To have and to hold the said piece or parcel of ground and premises and appurtenances unto and to the use of the said parties of the
365 second part, and the survivor of them, his heirs and assigns. In and upon the trusts, nevertheless, hereinafter *after* mentioned and declared, that is, in trust, to permit the said Samuel A. Peugh, his heirs or assigns, to use and occupy the said piece or parcel of ground and the rents, issues, and profits thereof to take, have, and apply to and for his and their sole use and benefit, until default be made in the payment of said notes or any of them. And upon the full payment of all of said notes, and the interest thereon, and all other proper costs, charges, and expenses at and before the sale hereinafter provided for, to release and reconvey the said piece or parcel of ground unto the said Samuel A. Peugh, his heirs or assigns, at his or their costs and expense. And upon this further trust, that upon default being made in the payment
366 of the said notes or any of them, then or at any time hereafter, to sell the said piece or parcel of ground and premises at public auction, upon such terms and conditions, and at such time and place, and after previous public advertisement, as the said parties of the second part, or the survivor of them, or his heirs, in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to the purchaser or purchasers thereof, at his or their cost and expense, and of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of the said sale or sales; sec-

ondly, to pay whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not; and
367 lastly, to pay the remainder, if any, to said Samuel A. Peugh, his heirs or assigns.

In testimony whereof the said Samuel A. Peugh and his said wife have hereunto set their hands and seals on the day and year first hereinbefore written.

SAMUEL A. PEUGH. [SEAL.]
CAROLINE S. PEUGH. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN S. HOLLINGSHEAD.
Z. K. OFFUTT.

DISTRICT OF COLUMBIA,
County of Washington, ss:

We, John S. Hollingshead and Z. K. Offutt, justices of the peace in and for the county of Washington aforesaid, in the said District, do hereby certify that Samuel A. Peugh, a party to a certain deed bearing date on the sixteenth day of February, 1857, and hereto
368 unto annexed, personally appeared before us in our county aforesaid, the said Samuel A. Peugh being personally well known to us to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this 17th day of February, A. D. 1857.

JOHN S. HOLLINGSHEAD, *J. P.* [L. S.]
Z. K. OFFUTT, *J. P.* [L. S.]

DISTRICT OF COLUMBIA,
County of Washington, ss:

We, John S. Hollingshead and Z. K. Offutt, justices of the peace in and for the county of Washington aforesaid, in the said District, do hereby certify that Caroline S. Peugh, the wife of Samuel A. Peugh, a party to a certain deed bearing date on the sixteenth day of February, A. D. 1857, and hereunto annexed, personally appeared before us
369 in our county aforesaid, the said Caroline S. Peugh being personally well known to us to be the person who executed the said deed, and being by us examined separate and apart from her husband, and having the deed aforesaid fully explained to her, the said Caroline S. Peugh acknowledged the same to be her act and deed, and declared she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 17th day of February, A. D. 1857.

JOHN S. HOLLINGSHEAD, *J. P.* [L. S.]
Z. K. OFFUTT, *J. P.* [L. S.]

370 *Testimony for defendant.*

In the supreme court of the District of Columbia.

PEUGH *v.* DAVIS. } Equity, 1713. Docket 9. Filed.

Testimony for defendant.

Testimony of witnesses produced, sworn, and examined on behalf of the defendant. Taken by R. D. Mussey, examiner in equity sup. c't Dist. Col.

WEDNESDAY, *October* 13*th*, 1869.

Met according to notice. Present, Mess'rs Davidge and Norris, of counsel for defendant, and Mess'rs Merrick and Stanton, of counsel for plaintiff.

WILLIAM H. WARD, a lawyer, resident of Washington City, D.
371 C., and about 50 years of age, a witness produced, sworn, and examined on behalf of the defendant, being examined by M'r Davidge, of counsel for defendant, says:

Direct examination:

Q. Do you know the parties to this suit; and, if yea, how long have you known them?

A. I have known them for many years.

Q. Look at the paper now shown you, and state in what handwriting it is and by whom signed. (Showing the witness the paper filed herewith and marked "Exhibit A.")

A. It is my handwriting, and is signed by S. A. Peugh.

Q. By whom is it witnessed?

A. By Francis Mohun and myself.

Q. Do you know the handwriting of Francis Mohun?

A. Yes, sir.

Q. Do you know that of M'r Peugh?

A. Yes, sir.

372 Q. Look at the receipt annexed to the paper and, state in whose handwriting that receipt is and by whom signed.

A. It is in my handwriting, and is signed by M'r S. A. Peugh.

Q. State when and under what circumstances the paper and the receipt were drawn by you and executed by the complainant.

(Objected to.)

A. I only recollect the date from the date of the paper—that is, the exact date. M'r Peugh and M'r Davis came into my office together and *and* stated that M'r Peugh had previously made a conveyance of the two squares named in the paper to M'r Davis; that that conveyance was in effect a mortgage; that M'r Peugh had the right to redeem; and that the matter was then to be settled by a further advance, and
373 that the sale was to be finally completed. I wrote this paper, as I believe, while they were in the office, and it was then and there signed.

(Answer objected to.)

Q. What was the further advance, according to the statement of the parties?

(Objected to.)

A. I don't recollect the further advance; it was something, but I don't recollect what.

Q. Look at the receipt, and refreshing your recollection by means of that, state if you can the amount of the further advance.

(Objected to.)

A. (The witness looked at the receipt and said:) The receipt is for $2,000. I don't recollect the further advance. There was one, but what it was I don't recollect.

Q. State for what purpose you drew that deed or paper and the receipt annexed.

374 (Objected to.

M'r Merrick desires to enter the specific objection that the purpose the witness had is not competent evidence, and if any parol evidence

is admissible at all it is penal evidence of the declarations of the complainant in the case made to the witness.)

A. My recollection is that it was; and from reading the paper I think that it was also done to indemnify M'r Davis against a claim growing out of suit or litigation.

Q. You have spoken of a conveyance which M'r Pough had previously made of the two squares to M'r Davis, and which was intended to be a mortgage. State whether at the time you drew the deed and paper shown you (Exhibit A) you were aware of the existence of such conveyance.

375 (M'r Stanton objects to the question as irrelevant and inadmissible.)

A. I think the conveyance itself, or a copy, was shown me at the time.

Q. Was M'r Francis Mohun in your office when you drew the deed and receipt Exhibit A?

A. I think he was.

Q. What do you mean by saying that there was to be a further advance, and the sale was finally to be completed?

(Objected to.)

A. I mean that I understood M'r Davis——

(M'r Merrick objects to the witness stating what his understanding was, claiming that the only evidence admissible is his recollection of what was said.)

——was then to pay an additional sum of money to complete his purchase of the property named in the agreement.

376 Q. Have you any recollection that the defendant represented to the complainant that their relations were to continue unchanged and that the relation of mortgagor and mortgagee was still to continue?

(Objected to as leading and for other reasons.)

A. I have no such recollection.

Q. State anything that passed between the parties at the time in relation to the design of the parties that the paper or papers drawn by you should operate as a security only for a further loan and not as a final settlement.

(Objected to.)

A. My belief, from what did transpire——

(M'r Merrick objects to the witness stating his "belief," and insists that he shall confine himself to his recollection of the facts—the

377 witness himself knowing what is competent testimony,)

——My recollection is that the transaction then and there made was a final sale of the property.

(M'r Merrick objects to the answer as stating the substantial result and conclusion to which the witness arrived, instead of the facts upon which he based that result and conclusion, and, also, as irrelevant.)

A. I desire now to call your attention to a statement in relation to the present case: "Before the plaintiff (M'r Pough) would consent to execute the said paper, he called on the defendant's conveyancer, W'm A. Ward, who, as the plaintiff knew, had been in consultation with the defendant on this point, and asked whether fraud on the part of

378 the defendant could give the said conveyance any other operation than as aforesaid, and whether the plaintiff would be safe in executing said paper under all the circumstances, and whether the defendant could or would in any way take advantage of it to the injury of the plaintiff." State fully your knowledge and remembrance touching the several matters contained in that statement.

A. I have no recollection whatever of any such interview or conversation.

Q. How often, and when, did you see the complainant in relation to the deed or paper and receipt (Exhibit A)?

A. I have no recollection of having seen him in relation to this matter, excepting when the paper was prepared.

Q. I will now read you a further statement: "Whereupon, the said conveyancer of the defendant replied that he understood the
379 transaction as a loan, with the said instrument as security for the repayment thereof, and he thought there was no danger whatever in executing the paper, and that he thought the defendant would take no advantage of it, and thereupon the instrument was executed by the plaintiff and delivered to the defendant." State what you know in relation to that statement.

A. I have no recollection of any such conversation.

Q. Did or did not any such conversation take place?

A. It did not.

Q. Were or were not the inquiries, mentioned in the preceding statement as having been made by the complainant to you, that is, "Whether fraud on the part of the defendant could give the said conveyance
380 any other operation than as aforesaid, and whether the plaintiff would be safe in executing said paper under all the circumstances, and whether the defendant could or would in any way take advantage of it to the injury of the plaintiff"—was either of said inquiries made by the complainant or any else of you, at or before or after the execution of the deed or paper and receipt which you drew, Exhibit A, to wit?

A. No such inquiries were made of me by anybody at any time.

Q. Was either one of the said inquiries made?

A. No; neither one.

Q. Had you been consultation with the defendant in relation to the papers which you drew at any time before the parties came together into your office, as you have testified?

A. I don't recollect that there was any such consu'tation.

381 And the witness being further examined by M'r Merrick, of counsel for plaintiff, says:

Cross-examination:

Q. State, specifically, what branch of the legal profession you have adopted as your pursuit, and how long you have been engaged in it?

A. I have made real estate my specialty, and have been engaged in it for probably twenty years.

Q. How long have you been engaged as a conveyancer?

A. During the time named.

Q. Was your time very much occupied in your business in the year 1858? And what portion of your time was taken up in attending to it?

A. My time was very much occupied at that time in my busi-
382 ness, and I devoted all the business hours of the day to it.

Q. State whether or not you recollect the circumstance of the complainant and defendant coming to your office in 1858 and consulting you in regard to this business?

A. I recollect distinctly them coming to my office and consulting me in relation to this matter.

Q. Was M'r Mohun in your office at the time they came here, or did he come in afterwards?

A. I think he was there when they came. I recollect [illegible] he was there at the time.

Q. How long were these gentlemen in your office on [illegible]

A. My recollection is that they were there long enough for [illegible] this paper.

Q. Were they there any longer?

A. They may possibly have been there some time longer, but I don't recollect.

383 Q. When they came in, did you know nothing of the purpose of their visit, or of the business upon which they desired to see you?

A. I don't recollect, but I don't think I did.

Q. Who paid you for drawing the paper?

A. Well, I am not sure about that, but I think M'r Davis paid me.

Q. Had not M'r Davis seen you in relation to the paper before the visit of which you have spoken?

A. I don't recollect that he had.

Q. Is the paper exhibited to you, and marked "Exhibit A," the first and original draft of the paper made by you, or is it a copy from the first and original draft?

A. I think it is the first and original draft of the paper.

Q. Was it dictated by either plaintiff or defendant; and, if so, by which one?

384 A. It must have been at the dictation of both.

(M'r Stanton objects to the answer as not responsive to the question, and as being the mere inference of the witness.

M'r Merrick objects to the answer as evasive, and repeats the question.)

Q. Was it dictated by either plaintiff or defendant; and, if so, by which?

A. It was not "dictated" exactly, to use that word, by either. It was written, as such papers are usually written, from the statement of parties, both parties being present.

Q. Had you any memoranda from which to draw that paper previously given to you, or previously made out by you?

A. I think not.

385 Q. Can you recollect what was said specifically by either of the parties to you, or to each other, independent of the aid given to your memory by the paper itself?

A. I cannot. I can only recollect the impressions made upon my mind by conversations of the parties, taken as a whole.

Q. Have you any recollection of any inquiries in relation to this subject addressed to you by the complainant?

A. I have not.

Q. Do you mean to say that he never did address any to you upon this subject?

A. He never did, that I now recollect.

Q. Did you see the complainant in regard to this subject before the visit referred to of the complainant and defendant?

A. I think not.

386 Q. Did you see the complainant in regard to this subject after the visit of the complainant and defendant, and about that time?

A. I think not.

Q. You have stated that the paper Exhibit A was written "as such papers are usually written, from the statement of the parties, both

parties being present." State whether it embodies all the agreements arrived at by the parties then present.

A. It undoubtedly did, so far as I understood them at the time.

Q. Look at the paper Exhibit A, and state whose writing that is on the back.

A. I don't know; it is in pencil.

Q. State whether or not you drew the original deed, from Peugh to Davis, of this property spoken of in the examination-in chief.

A. I think not, sir.

387 Q. When did you first learn that that deed was a mortgage?

A. I don't think I knew anything about its being a mortgage until the time of preparing this Exhibit A.

Q. Did you examine the Wiltberger tax-title, and give an opinion to the defendant, M'r Davis, in regard to that title?

A. I think I examined the Wiltberger tax-title for M'r Bayliss. I may have told M'r Davis afterwards what was the result of that examination. I don't think I made any examination for M'r Davis.

Q. What did you tell M'r Davis in regard to it, and when?

A. I don't recollect when, but if I spoke to him at all about it, I told him that the Wiltberger tax-title was not a good tax-title.

Q. When did you make the examination for M'r Bayliss?

388 A. When M'r Bayliss purchased from the heirs of Natley Young; time not recollected.

Q. Was it before the date of the paper marked "Exhibit A"?

A. Yes, sir.

Q. When you informed Davis of the result of your examination, was it not before the date of the paper marked "Exhibit A"?

(M'r Davidge objects to the question, as the witness has not said he informed Davis, but has said if he did inform him, the witness did not know when.)

A. I don't recollect whether I informed M'r Davis or not. I may possibly have stated to him the result of my investigations. If so, I have no recollection of the time when.

Q. Did you ever examine the title to the property mentioned in

389 Exhibit A for any one, and, if so, for whom, and did you make an abstract of title, and for whom did you make such abstract?

A. I made an examination of the title for M'r Bayliss, and probably made an abstract of it for him.

Q. When did you make that abstract?

A. I don't now recollect.

Q. Was it prior to 1858?

A. I should say some years prior to 1858.

Q. Was it whilst Bayliss was the owner of the property, or was it with a view to the purchase of the property by him?

A. My first examination for Bayliss was made for M'r Bayliss with a view to purchasing the Young title. Whether I subsequently continued the examination or not I now don't recollect.

390 Q. Did you ever make any other abstract than one for M'r Bayliss?

A. I may have done so.

Q. Are you positive that you never made an abstract for the defendant?

A. I don't think I ever did.

Q. Can you say that you did or did not?

A. I have no recollection of ever having made an abstract for M'r Davis of this particular property.

Q. Did you ever have any conversation with M'r Davis in reference to this property prior to the date of the paper marked "Exhibit A"?

A. I may or may not have had. I don't recollect whether any conversation with him, if I ever had any, was before or subsequent to the preparation of Exhibit A.

Q. May you not have had a conversation with him in reference to the property both before and after the execution of the paper Exh. A?

391 A. Certainly.

Q. You have no recollection, then, of not having had a conversation with him in reference to this property, and cannot say that you did not have a conversation with him in reference to this property before the visit of the plaintiff and defendant to your office?

A. I cannot say that I did not have such a conversation.

And the witness being further examined by M'r Stanton, of counsel for plaintiff, says:

Q. Is your recollection specific that the conveyance from the plaintiff to the defendant was designated as in effect a mortgage?

A. My recollection is that the parties so notified me at the time, that the conveyance was to secure a loan.

And the witness being further examined by M'r Merrick, of counsel for plaintiff, says:

392 Q. State specifically what was said by either of the parties at the time the paper Exhibit A was prepared by you, and by whom the statement was made in reference to the sale, using the language used by them as near as you can.

A. I cannot state specifically what was said or the language used, or by whom said or used. I can only state my general recollection of the conversations. I will state that the paper being drafted in accordance with the statements then made was approved by both parties.

Q. Was the suit based upon the Wiltberger tax-title spoken of in that interview?

A. Very likely it was. I think it was.

Q. Don't you know that it was?

A. Yes; I think it was.

393 Q. Don't you know that the bond marked "Exhibit A" was given to indemnify the defendant against the costs of that suit?

A. It was given to indemnify the defendant against the costs of that suit as well as the purchase-money for the property.

Q. Does the bond say anything about any purchase-money?

A. It does.

Q. Read it.

A. (The witness reads.) "And further, that he, the said Peugh, and his heirs, executor, and administrators, shall and will pay and refund to said Davis, his heirs and assigns, all and singular the loss, costs, damage, and expenses, including the consideration in said deed or conveyance."

Q. What "deed or conveyance" does that refer to, and does not

394 the bond speak of the purchase in the commencement of it?

A. It refers to the first deed from Sam'l A. Peugh to Henry S. Davis.

Q. (By M'r Stanton.) The mortgage?

A. It is not called "a mortgage," but is the first conveyance, and speaks of that conveyance containing only a special warranty.

Q. Is that conveyance to which you refer in your last answer the deed

of which you have heretofore spoken as having been given in the way of a mortgage?

(M'r Davidge objected because the witness has referred to the deed as intended by the parties to operate as a mortgage, but not as a mortgage in form.)

A. It is.

W'M H. WARD.

Subscribed and sworn to before me this 13th day of October, A. D. 1869.

R. D. MUSSEY,
Examiner, &c.

395 FRANCIS MOHUN, about 60 years of age, by occupation a lumber-merchant, and by profession a carpenter; a resident of this city, a witness produced, sworn, and examined on behalf of the defendant, being examined by M'r Davidge, of counsel for defendant, says:

Direct examination:

I know the parties to this case and have known them for many years. (Looking at Exhibit A.) I witnessed this paper. It is my signature. I witnessed it in M'r Ward's office, then in the *in the* building called "Todd's building," on the avenue. M'r Ward, M'r Peugh, M'r Davis, and myself were present. I found the others there when I went to the office. Business with M'r Ward took me to the office; don't remember the business on which I went.

396 Q. How long were you there?

A. I don't remember now. My recollection is that when I went in M'r Ward was engaged in writing some paper and said, "Sit down; I will be at leisure in a moment," or something of that sort.

Cross-examination waived.

FRANCIS MOHUN.

Subscribed and sworn to before me this 13th day of October, A. D. 1869.

There being no further witnesses present on behalf of the defendant, the further examination of witnesses on behalf of the defendant was postponed until Friday evening, the 15th inst., at 7 o'clock.

And thereupon, at 9 o'clock and 45 minutes p. m., adjourned.

FRIDAY, *October 15th*, 1869.

397 Met as by adjournment, but to accommodate counsel for defendant, and on their suggestion, the further examination of witnesses on behalf of the defendant was postponed until Wednesday, the 20th inst., at 7 o'clock p. m.

WEDNESDAY, *October 20th*, 1869.

Met as by adjournment, but, at the suggestion of counsel for defendant, the further examination of witnesses on behalf of the defendant was postponed until Monday, the 25th inst., at 7 o'clock p. m.

MONDAY, *October 25th*, 1869.

Met, as by adjournment, at 7 o'clock p. m.

Messrs. Davidge & Norris appeared for defendant.

Messrs. Merrick & E. L Stanton appeared for the plaintiff.

HENRY S. DAVIS, the defendant in this cause, being produced,
398 sworn, and examined as a witness on behalf of the defendant, being examined by Mr. Davidge, of counsel for defendant, says:

Direct examination:

Q. Do you know Samuel A. Peugh, the complainant in this cause; and, if so, how long have you known him?

A. My first acquaintance with Samuel A. Peugh was very early in March, 1857.

Q. Did you early in March, 1857, have any business transaction with him? If so, state when, and the nature of the transaction, and all the circumstances connected with it.

A. M'r Peugh applied to me to loan him $2,000, about the 1st of March, as near as I can say, in 1857; I cannot tell the day. He offered me $300 for the loan of $2,000 for 60 days. He offered me a deed
399 in fee for squares 910 and 911 as security for the loan, and I told him that it was a large sum of money to pay for the loan of $2,000 for that period of time, and that if he had a good title to the property I would loan him the money for half that sum. He stated that he had a good title. I told him he must produce the evidence of the title. He said that he had bought the property from Buckner Baylies, and that M'r W. H. Ward had examined the title for M'r Baylies, who purchased of the Young heirs, and that M'r Ward pronounced the title good, and referred me to M'r Ward to ask him about the title. I called upon M'r Ward. M'r Ward told me that M'r Cha's H. Wiltberger claimed a tax-title, but that his title was not good, but the Young title was, and
400 that Mr. Peugh had a good title to the property. M'r Ward also stated that he did not think that Wiltberger would ever bring any suit to reclaim the property under the tax-title, and that I would be safe in loaning the money to M'r Peugh, if I thought the property worth it. I loaned the money to M'r Peugh for 60 days, with the distinct understanding that if the money was not paid within that period of time I could put the deed on record and the property was to be mine. Some time before the expiration of the 60 days M'r Peugh came and paid me the money, the $2,000 and the $150, and I returned him his deed.

Q. When he repaid you the money did any conversation take place in relation to the $150?

A. Yes, sir; there did.

Q. State what it was.

401 A. When he paid me the money and I returned him his deed, he says to me: "M'r Davis, you thought it a little strange that I should offer you so large a sum for the loan of $2,000 for 60 days." I told him I did, and that was the reason why I told him that I would take one-half of his offer. "Well," says he, "sir, I made over $1,100 by that transaction, after paying you the $150 extra." And says I, "You must be doing a pretty good business to be making so much money as that in that time." "Yes," he said, "he was." "Well," says I, "Peugh, how did you make that much money?" "Well," says he, "you know that I am prosecuting claims, and we sometimes have an opportunity to catch people in a tight place. I have a client," he said, "for whom I have been prosecuting a claim, and I have got the claim through,
402 and I knew the money would be paid inside of 60 days. I thought he was a little in want of money, and I made an offer to him to buy him out, which he accepted; and in that way I made the money, eleven hundred and some odd dollars, after paying you."

Q. How did you pay him the $2,000?

A. I gave him two checks on the 6th of March, 1857; one for $1,740 and one for $260. He asked for the two checks in the way stated, as he wanted to pass one of them away. The checks were both drawn to his order.

Q. Are these the checks now shown you (producing the papers filed herewith and marked)?

A. Yes, sir.

Q. Are they endorsed by the complainant?

A. His name is on the back of them. I supposed he endorsed them.

Q. How did they come into your possession?

403 A. Through the bank where I kept my account.

Q. Did you subsequently and in the month of May, 1857, have *have* another business transaction? If so, state fully what it was, and all the circumstances connected with it.

A. On the 4th of May, 1857, M'r Peugh came to me with the same deed, and asked me for a loan on the same squares of ground of $1,500, with the distinct understanding that if it was not paid at that period of time I might put the deed on record, and the was to be mine. There was nothing whatever said about any interest at all, either legal or illegal. At the expiration of the 60 days M'r Peugh did not come forward to pay the money, and there being no note given I called

404 upon him. He refused to pay. I spoke to M'r Peugh several times afterwards to settle the money. He declined to do it. On the 7th of September I put the deed on record. I had no further interview with Mr. Peugh on the subject until after two writs of ejectment had been served upon me by M'r Wiltberger, about the middle of January, 1858. Directly after those writs were served M'r Peugh came to me and wanted to sell out his equity in the two squares. I told him he had no equity in them, as between gentlemen and honorable dealing he had no claim on the property or on me. He claimed that he had an equity in the property and proposed to sell it out to me for $500, which I declined.

I then offered to M'r Peugh to take the $1,500 that I had let him have on the 4th of May, 1857, in full payment without any

405 interest, either legal or anything else. He refused to pay the $1,500. I asked him to sell the property and pay me the $1,500. He said the pressure of the times was such that it was almost impossible to sell property at all, and that he doubted whether the property at that time would bring the amount of money, but said it would be better. I told him I couldn't accept his proposition to pay him $500, especially in view of the depressed state of real estate, and the fact that these suits had been brought against the property, which it was impossible for me or any one else to tell how they would be decided or the amount of costs and expenses attending them.

He came to me a few days after that, and proposed to give me a

406 bond of indemnity against all costs and principal, which I agreed to, believing M'r Peugh to be perfectly able to indemnify me for the costs and the price of the property. We went together to M'r W'm H. Ward's, where the whole statement was made as to the first agreement, and M'r Ward drew up the covenant that has been presented here, with the distinct understanding——

(M'r Merrick objects to the statement by witness of any "understanding.")

——that it was in full satisfaction for any assumed claims or claim that M'r Peugh had upon the property, and he at the same acquiesced

in the covenant without any hesitation whatever and gave a receipt in full attached to said covenant for the two sums of money, and I gave him the $500 in money.

407 Q. Look at paper now shown you (Exhibit A), and say whether it contains the covenant and receipt to which you refer.

A. Yes, sir; that is the paper.

Q. Whose signature is appended to the covenant and receipt?

A. S. A. Peugh's—sealed.

Q. Did you see him sign it?

A. Yes, sir.

Q. Where did he sign it?

A. In the office of W'm H. Ward, on Pennsylvania avenue, in what was called Todd's building.

Q. Who were present?

A. Francis Mohun, W'm H. Ward, myself, and M'r Peugh.

Q. How and where was the money paid?

A. The money was paid to him in cash, in M'r Ward's office.

Q. How much did you pay him?

A. Five hundred dollars.

408 Q. What sums go to make up the amount of money in the receipt?

A. The $1,500 that I had given to him on the 4th of May, 1857, and the $500 that I had given to him on the 9th of February, 1858.

Q. Look at the paper now shown you, and say what it is (producing the paper filed herewith and marked "Exhibit D").

A. It is the check which I gave on the 4th of May, 1857.

Q. How did you get it?

A. Through the bank where I kept my account.

Q. When the complainant offered, as you have stated, if you would pay him $500, to give you a covenant of indemnity, did you accede to or decline that offer?

(Objected to as leading and assuming what was not stated.)

A. I acceded to the proposition, as before stated.

409 Q. How long after you acceded to it did you, in company with the complainant, M'r Peugh, go to M'r Ward's office?

A. To the best of my recollection, we went there either the same day or the next.

Q. Which of you stated the case to M'r Ward?

A. It was done by both of us. There was no disagreement about the statement of the case at all.

Q. At whose suggestion was the mode of settlement carried out by M'r Ward adopted?

A. As I have stated, there was no disagreement between the statements, which were both made to M'r Ward in connection with each other about the transaction, and the drawing of the paper to close the transaction was left with M'r Ward.

410 Q. Did he draw the paper in your presence?

A. He did.

Q. And in the presence of M'r Peugh?

A. He did.

Q. Before going with Peugh to M'r Ward, to make the settlement on the terms agreed between you, had you taken counsel with M'r Ward upon the subject?

A. None whatever, sir.

Q. Had you sought counsel from any other party?

A. From no person.

Q. Do you know why a new deed was not drawn by M'r Ward?

A. M'r Peugh told M'r Ward that he had sold the property to me on the conditions I have stated, to wit: That if the money was not paid within 60 days, the property was to be mine; and M'r Ward said
411 there was no use of a new deed; and that is the only reason why a new deed was not made.

Q. Was that said in the presence of M'r Peugh?

A. M'r Peugh said it himself.

Q. Did Ward say that there was no use of a new deed in the presence of M'r Peugh?

(Objected to as leading.)

A. He did.

Q. To whom did M'r Ward make the remark that there was no necessity for a new deed?

A. To M'r Peugh and myself.

Q. Since this settlement, where have you lived?

A. 459 9th street, in the city of Washington, and 423 E street.

Q. In what place has the complainant lived?

A. That I cannot tell you, sir.

Q. In what city?

A. He has lived in the city of Washington.

412 Q. How often have you met him since the settlement?

A. A great many times; I can't tell you how many.

Q. What claim has he asserted to the premises?

A. I never heard of his asserting any until 1865.

Q. At the time of the settlement, or after, had you any conversation with the complainant in relation to the cultivation of these squares or either of them? If yes, state fully all that passed.

A. I did at the time of the settlement. He stated to me that some persons, naming a person whose name I don't recollect, was cultivating the ground out there, the squares. And I stated to him that I had no objection to their being cultivated, especially the lower square.
413 I believed if it was left without some care being taken of it it would be apt to wash into gulleys. One of the reasons for (objected to) telling me that the property was in cultivation was to ascertain whether I would let the man stay there was on it; and, as I stated there, I told him that I would rather have it cultivated than not.

Q. When did you first examine these squares?

A. I never went to look at the squares until after M'r Peugh declined to pay me back the money, the $1,500.

Q. Were they cultivated then?

A. The last cultivation that I recollect of was in 1858.

Q. Were they cultivated when you first went to look at them?

(Objected to as leading, and M'r Davidge puts the question thus:)

414 Q. In what condition were they in respect to cultivation when you first went to look at them?

A. My impression is that the lower was seeded in oats—I don't recollect of anything being on the upper one—or had been seeded in oats that year.

Q. Were these squares or either of them improved?

(Objected to.)

A. They had a light fence around them. That was all the improvement there was to them.

Q. Why did you think they were not cultivated later than 1858?

(Objected to.)

A. Because I have no recollection of ever seeing them in cultivation after that time.

Q. State all you know in relation to any acts of ownership exercised over these squares or either of them by the complainant, and with
415 your knowledge, after your final settlement with him on the 9th of February, 1858?

A. He never professed to have any ownership over them, nor any person else, that ever I heard of until 1865.

Q. Until that time, what acts of ownership did he exercise over them or either of them with your knowledge?

A. None whatever.

Q. What happened in 1865?

A. I was informed by a gentleman that there was a house (M'r Merrick objects to witness stating his information) built on a square belonging to me, square 911. I went out and found that a colored man by the name of Geo. Henry Simms, as he stated, had built him a small house on square 911. I asked him how he came to build a house there. He said he had leased it from M'r Peugh for five years rent free to fence in as much ground as he wanted——

416 (M'r Merrick objects to witness' recital of this conversation.)

——and cultivate it.

Q. What then took place?

A. I stated to M'r Simms——

(M'r Merrick objects to witness stating his conversation with M'r Simms.)

——that the property belonged to me and that he must remove his house off of it, or he would find himself in trouble. He declared that he had innocently built his house there and that it would be very hard upon him to have to remove it, and that he would go and see M'r Peugh about it, and as soon as he saw him he would come and see me. He did come to see me and stated that he had seen M'r Peugh and told him that I had been out there and claimed the property, and that he
417 told M'r Peugh he should become my tenant if I would let him, as he believed I owned the property. And he did come and entered into a written agreement to be my tenant.

Q. Look at the paper now shown you (producing the paper filed herewith, and marked "Exhibit E"), and state what it is.

A. It is the written agreement between Simms and myself that he shall become my tenant from the time stated in the paper.

Q. What next did you hear of any claim to title or resulting trust on the part of the complainant?

A. Mr. Peugh called to see me, and said he always thought that he had never conveyed his property away. I told him that he knew that wasn't so, and that he never would have come with any such
418 story as that if the property had not increased in value to some extent. He then proposed to me to pay me one per cent. for the time I had had the money on all the expenses I had paid out, particularly the taxes, redemptions from tax sales, and all.

Q. One per cent. a month do you mean?

A. Twelve per cent. per annum.

Q. When was that?

A. Shortly after this paper (Exhibit E) was made.

Q. What did you say in reply to that proposition?

A. I declined it.

Q. What other claim or assertion of title did he make after this?

A. There was a bill filed in equity.

Q. What bill?

A. The bill was filed by W'm J. Stone, in the name of Samuel Cole, against Sam'l A. Peugh and Henry S. Davis.

Q. What became of that bill?

419 (Objected to.)

A. M'r Stone, on seeing my papers——

(M'r Merrick objects to the statement of anything that passed between M'r Stone and the witness.)

——had the bill dismissed.

Q. Did you exhibit to M'r Stone the final settlement of the 9th of February, 1858, Exhibit A?

A. I did.

Q. Is M'r Stone dead now?

A. He is.

Q. Since the settlement of the 9th of February, 1858, what have been the rents and profits of these squares?

A. It is stated in that agreement with Simms.

Q. How long did Simms occupy?

A. That I can't tell you; but he paid what is here stated, $1.50 and $1.50 after; in all $6.

Q. What other rents and profits have you received for the premises?

420 A. None, sir.

Q. Since the settlement, who has paid the taxes on these squares?

A. I have paid the taxes, both annual and special, and have had to pay back taxes.

Q. What back taxes did you have to pay?

A. I had to pay taxes for which the property was sold in 1855; and if I had had any idea that I hadn't a good title I could have demanded a tax-title and got one, and can yet.

(M'r Merrick objects to "ideas," "had" or not "had.")

Q. Have you the certificates of tax sales redeemed by you? If yea, produce them.

A. I have, and these are they (producing the paper' filed herewith, and marked "Exhibit F" and "Exhibit G").

Q. In whose name are the endorsements?

421 A. On Exhibit F in that of W'm H. Phillip, and on Exhibit G that of L. M. P. King.

Q. Who held these certificates when you took them up?

A. Mr. King and Mr. Phillip.

Q. Was any extension made by you on the loan made to the complainant in May, 1857?

(Objected to.)

A. There was none made nor none asked.

Q. What interest was paid on that loan?

A. Never a cent.

Q. What interest was demanded?

A. There was no demand made until the time expired. I called upon Mr. Peugh, and he declined to settle. There was no interest demanded; nothing more than the payment of the debt. Of course I ex-

422 pected him to pay the interest on the loan.

Q. What interest?

A. The legal interest, 6 per cent. I expected it because loaned money always carries interest.

Q. There some passages in the testimony of M'r Peugh which I pro-

pose to read to you. "Before M'r Davis would let me have the [illegible] $500, he required of me a certain paper, the purport of [illegible] like and at first objected to its execution, but M'r Davis [illegible] execute it to protect him against any liability [illegible] suit that had been instituted by Charles H. Wiltberger, and said to me at the time, 'Peugh, you can trust this matter with me.'" Are the statements contained in that portion of the complainant's testimony correct?

(Objected to as leading.)

423 A. Not a word of them.

Q. Again he is asked, "Was this additional loan of $500 to bear interest?" and he replies, "My engagement with M'r Davis was to pay him precisely the same rate of interest which I paid on the other." What have you to say to that statement: "My engagement was to pay," etc.?

A. There was no interest to be paid on the $500. It was a final settlement and purchase of the property, and so intended.

Q. Again he is asked, "Was there any security given to M'r Davis for this increased indebtedness?" and he replies, "The two papers, the deed and the paper that has already been referred to." What do you say to that statement?

A. The papers were only given me as a final settlement of the
424 transaction. That was the only security which I had which *I had* which conveyed the property.

Q. Again he *I* asked, "Were you ever called upon to pay the interest which you say you agreed to pay upon this loan?" and he answers, "I was repeatedly called upon by M'r Davis to pay both principal and interest, and at one time, upon one of those calls, about the year 1858, he said to me, 'Peugh, you recollect you were to pay me 2½ per cent. a month for this money. It was in the beginning of the year 1858; I recollect it perfectly; it was at the corner of Willard's Hotel; I recollect the transaction as well as I do anything in my life.'" What do you say to that?

A. I never called upon M'r Peugh for money after I put the deed on record, the 7th of September, 1857, and he never paid me a far-
425 thing on that loan in any shape or way.

Q. (M'r Davidge repeats the introduction to the preceding question, viz, the citation from M'r Peugh's testimony, and says:) Did you have any conversation with him in relation to interest or principal after the settlement in February, 1858?

A. Never.

Q. Again he is asked, "What was the general character of these demands of which you speak, for the payment of principal and interest, as to frequency or infrequency, and the manner in which they were made?" and he answers, "I scarcely saw M'r Davis without his making allusion to the payment of the money due him." What do you say to that statement?

A. I can only repeat that I never called upon M'r Peugh for
426 principal or interest, or had any conversation with him on that subject after I put the deed on record until after the suits were brought against me by Wiltberger he came to me and wanted to sell out what he styled his equity in the matter. At that time I offered to take the principal without any interest whatever, and he refused to pay.

Q. Subsequently, did you ever have any conversation with him in which you demanded either principal or interest?

A. Subsequent to when?

Q. Subsequent to this conversation, after the Wiltberger suits.

A. I had before I put the deed on record.

Q. Subsequent to this Wiltberger suits did you ever have any conversation with him in which you demanded either principal or interest?

427 A. After the 60 days expired, for which the $1,500 loan was made, I called upon M'r Peugh for payment perhaps two or three times before I put the deed on record. Never after that time had I any conversation with M'r Peugh in regard to the principal or the debt until after the Wiltberger suits were brought.

Q. After that time what conversation had you with him about principal or interest?

A. I never had any.

Q. The complainant again says, "I continued uninterruptedly to exercise ownership over them" (these squares), "and that after Simms had become an occupant of the house he built upon the ground, at an expense of a few hundred dollars, I was called upon by some one from M'r Davis objecting to what I had done, and claiming for the first time the
428 squares as his;" and again that, "before that time Davis never objected to any acts of ownership by me over the premises," and that "I was never more surprised than when the communication came to me." What have you to say in reply to this statement?

A. If M'r Peugh exercised any ownership over that property he was a trespasser. He never professed to, and I never heard anything whatever of it. I was a very busy man about that time; had a great deal of business to do, and sometimes would not go out on that road probably for a year, and I was much more surprised than M'r Peugh, as I expect, to hear that he laid any claim to the property whatever. I had held it uninterruptedly; paid all the taxes. M'r Peugh never spoke to me about it, as often as he saw me.

429 Q. What acquiescence was there on your part in his acts of ownership?

A. None whatever.

Without concluding the direct examination of this witness, the further examination of witnesses on behalf of the defendant was postponed to Friday, the 29th inst., at the same place, at 7 o'clock p. m., and thereupon, at 10 o'clock p. m., adjourned.

FRIDAY, *October* 29, 1869.

Met as by adjournment, but owing to the indisposition of one of counsel for defendant, adjourned to meet at the same place on Monday, November 1st, at 7 o'clock p. m.

MONDAY, *November* 1st.

Met as by adjournment, but, at the suggestion of counsel for
430 defendant, adjourned until Tuesday, the 2d inst., at the same place, at 7 o'clock p. m.

TUESDAY, *Nov.* 2*d*, 1869.

Met as by adjournment.

M'r Norris appeared for the defendant. Mess'rs Merrick and Stanton appeared for the plaintiff.

The direct examination of M'r Davis was continued by M'r Norris:

Q. State how long you have lived in the city of Washington, and whether during that time you have dealt in real estate, and whether you

are acquainted with the prices at which city lots sold during the fluctuation from 1854 up to 1860.

A. I have been living in the city of Washington going on 37 years. I have been dealing on and off in property a good while. I cannot
431 say exactly how long. I was in 1854 and prior to that time well acquainted with the prices of property, not only from any actual dealing of my own in it, but I dealt a good deal in it for other people, and being largely engaged in mechanical pursuits, where I was constantly brought in contact with sales being made, and many times purchasing for the parties. In 1854 property was at the very highest figure it had ever reached prior to that time. The raise of property commenced in 1851, after the compromise measures of '50, and it was up from that time till the latter part of '55. Property became then a little stagnant, owing to the threatening pressure coming on the country, money being tight, and continued to get worse and worse all through
432 the year '56, and after the panic of '57 broke out it was scarcely possible to sell a piece of property without it was forced into the market, without it was sold very cheap, and it continued so up to '59, when it began to improve a little.

Q. I will ask you to state about what was the value of squares 910 and 911 in the years 1857 and 1858.

A. Early in 1858, in March, '57, when I took the property for $2,000 from M'r Peugh, I suppose the squares were worth the amount of money that I advanced on them, $2,000. On the second transaction I suppose they were worth the money I advanced then on them, and a little more perhaps. At the expiration of that period, 60 days from the 4th of May, 1857, I was satisfied in my own mind that the property would not bring under the hammer the amount of money, $1,500, that I had ad-
433 vanced, and, as I have before stated, I offered to take the $1,000 and return the deed without interest; and the same offer I made him in 1858, when he applied to me or demanded of me $500 for his equity in the property, and he refused to sell the property to pay me at that time, and I being satisfied that it wouldn't bring any money more, I had to take the chances and wait till it got better; and I am now perfectly satisfied, as I was then, that the property would not bring $1,500 under the hammer or in any other way.

Q. State whether you have ever had since the execution of that instrument called a conveyance of the equity of redemption (Exhibit A) any pecuniary transaction with M'r Peugh; and, if so, what?

A. I have had one transaction with him since. M'r Peugh came to me on the 3d of September, '58, ——
434 (Objected to.)
—— and applied to me for a loan of $2,000, and gave me as collateral security, I think it was, two notes drawn by Buell and Blanchard. The length of time they had to run I don't remember. They fell due and were not paid. My impression is that they were protested in bank, or there may have been a waiver put on them; but my best recollection is that they were protested. I held those notes until they were nearly out of date; it was nearly three years. I could neither get any money out of M'r Peugh or out of M'r Buell & Blanchard. Just before the notes expired, that is, just before they were out of date, I informed M'r Peugh that the paper must be paid or renewed or I should enter
435 suit against himself and Buell & Blanchard. The notes were renewed and not paid. I held these notes, I think, about two years longer or some considerable length of time, and some person finally paid them. I am not certain who it was that done it; and if I had given

M'r Peugh the 200_{100} and never asked him for it and never troubled myself about getting it, I would have been better off than I was when I got it, for it cost me more to get it than the $200 was worth.

Q. State whether you paid him in money or gave him a check on your bank for that amount.

A. I gave him a check, and this is it (producing the paper filed herewith and marked "Exhibit H").

Q. I want you to state now what interest was paid on that money, if any.

436 A. To the best of my recollection and belief there never was one farthing paid on it.

And the witness being further examined by M'r Merrick, of counsel for plaintiff, says:

Cross-examination:

Q. For how much were the notes of Buell & Blanchard?

A. I don't remember the amount of them, sir.

Q. Did Peugh give you a note at the time he deposited the notes of Buell & Blanchard as collateral security for this loan of $200?

A. To the best of my knowledge I don't think he did.

Q. Didn't you, then, buy Buell & Blanchard's notes from Peugh?

A. I didn't. M'r Peugh handed me the notes as collateral and
437 promised to pay me in a very short period; the length of time I could not state, but I am very well satisfied that it was not over 60 days.

Q. What evidence of private obligation or debt did Peugh give to you of this transaction?

A. He gave me Buell & Blanchard's notes with his endorsement. The notes were drawn to his order.

Q. You have stated in your examination-in-chief that those notes were protested. State whether or not you sent them to bank for collection.

A. I did send them to bank for collection.

Q. When they were renewed, as you have stated in your examination-in-chief, were they renewed with the same names upon them that were on the original notes?

A. My best recollection is that they were drawn by Buell & Blanchard to Samuel A. Peugh, and by him endorsed.

438 Q. Did you ever make any other demand on Buell & Blanchard than the notice sent to them from *from* the bank for the payment of these notes?

A. I am under the impression that I did make demand on Buell & Blanchard for the payment of the notes at various times, and also to M'r Peugh himself.

Q. How much were Buell & Blanchard's notes for?

A. I have stated that I didn't remember.

Q. How much money was paid to you when the notes were paid?

A. My impression is that the notes were not drawn with interest, and I presume the face of the notes was paid me.

Q. If you don't know what the face of the notes was, and don't know how much was paid you, how do you know that you didn't receive
439 interest on the $200 that you profess to have loaned to Peugh?

A. Because M'r Peugh is now indebted to me—the amount I couldn't state—but I can make it up and tell you what he does owe me.

Q. If you don't know what the face of the notes was, and don't know how much was paid you, how do you know that you didn't receive interest on the $200 that you profess to have loaned Peugh?

A. In the suits brought by Williamson, M'r Peugh to recover the [illegible] the costs and all lawyer's fees, which he never done. I had also [illegible] to pay myself, and have never been able to get it from him.

Q. If you don't know what the face of the notes was, and don't know how much was paid you, how do you know that you didn't receive interest on the $200 that you profess to have loaned to P[illegible]

440 A. Because M'r Peugh didn't pay me what he owed me; I had to take what I could get.

Q. Did you keep all the money that was paid on the notes?

A. I am under the impression I didn't. I think M'r Buell was present when the settlement was made at the bank, and brought a gentleman there that paid me the amount of the check, and the notes were withdrawn from the bank and handed to M'r Buell or the gentleman who paid the money.

Q. If you didn't keep all the money yourself, what did you do with the balance that you didn't keep?

A. I didn't get any more to keep than was paid me.

Q. Hav'n't you already stated that you received the money due on the notes?

A. What I meant to convey was that I received the amount of
441 that check, $200; nor do I know, I repeat again, what the face of the notes was—for how much.

Q. If that is what you meant to say, what was the necessity for the replies that you have made to the question three times repeated?

A. Because the questions asked did not require the answer how made.

Q. Have you not stated in this cross-examination that you didn't know how much was paid you on those notes?

A. I have stated that all I got on those notes, to my best recollection and belief, was the amount of that check, Exhibit H.

Q. Did you not state, before so stating, that you did not know how much you had received on those notes?

A. I may have said so; I don't think I did, though, without
442 qualifying it. I don't think I said that without some qualification.

Q. Have you not said in this cross-examination that the face of those notes was paid you?

A. I believe I did.

Q. Is that a fact?

A. Well, if the notes were only $200, or drawn for $200, I think it is true that the face of them only was paid me; but if drawn for more, I am still satisfied that I got but the $200.

Q. Have you any recollection of getting less than their face?

A. No, sir.

Q. Have you any recollection of the notes being paid?

A. I recollect distinctly the matter was settled at the bank and that I got $200.

Q. Has anything occurred since this cross-examination has been going on to refresh your recollection and enable you to say that
443 you got no more than the face of those notes should the face prove to be more than $200?

A. There has nothing transpired to refresh my memory on that point in this transaction.

Q. You have spoken of Peugh's being indebted to you on the bond marked "Exhibit A." Was there any other money transaction between you and Peugh except that and the notes of Buell & Blanchard?

A. No other money transactions that I remember of, s r.

Q. Were those notes of Buell & Blanchard secured in any way?

A. There was nothing but the naked notes, with Peugh's endorsement.

Q. I understood you to state in your examination-in-chief that the deed of which Exhibit A to the bill is a true copy was originally
444 given to you by Peugh on the 4th day of March, 1857, as a mortgage to secure the payment of $2,000 in 60 days from that date, with an understanding that if the money was not paid at that time the absolute title should vest in you, and the deed be put on record. State, if you please, what amount of interest per annum was agreed to be paid for the use of that $2,000?

A. The deed was dated on the 4th of March, 1857, but the transaction was on the 6th. There was no agreement as to any rate per annum of interest between M'r Peugh and myself. M'r Peugh offered to pay me $300 for the loan of $2,000 for 60 days and to give me ample security. I told him that if his security was good I would loan him the $2,000 for 60 days for half the sum offered, with the distinct understanding at the time the transaction was consummated that if the money was not
445 paid in 60 days from that date, the 6th of March, I was to put the deed on record and the property was to be mine in fee-simple. Mr. Peugh paid me the $2,000 and the $150 before the expiration of the 60 days.

Q. At what time did M'r Peugh pay you the $150?

A. Some days before the time expired he paid me the money. I cannot state what the date was. I made no minute of it.

Q. Did he not pay you the $150 before he paid you the $2,000?

A. He did not.

Q. What per cent. per annum is $150 for the use of $2,000 for 60 days?

A. It is about 45 per cent., I believe, as well as I can run it up in my head; and if I had taken M'r Peugh's offer it would have been 90 per cent.

446 Q. I understood you to say that this same deed was, on the 4th of May, given back by M'r Peugh to you, after the settlement of the transaction above referred to, to secure a loan of $1,500 for 60 days, and that no interest was charged or agreed upon as to that loan. Will you explain why it is, after charging 45 per cent. per annum upon a loan of $2,000 for 60 days from the 6th of March, you should upon the same security and with the same individual make a loan of $1,500 on the 4th of May and charge no interest at all upon it?

A. If M'r Peugh had not offered in the first place the amount of interest he had I should have never said a word to him about interest at all. He had been very prompt in settling up the first transaction had with him. He came to me with the same deed and asked me
447 to let him have $1,500. He said nothing about interest and I said nothing about it. The only distinct understanding between us was that if he had not paid the money back in the 60 days I was to put the deed on record and the property was to be mine. I was doing at the time a large business and kept a large bank account. I was no money-lender for interest at all. I loaned money to a great many persons and never asked them any interest for it. I was following my legitimate business. I have loaned, I believe, more than a hundred thousand dollars, and never got a cent of interest for it or charged a cent of interest for it, and I can put gentlemen on the stand, now alive, to prove it.

(M'r Merrick objects to so much of the above answer as is not responsive to the question.)

448 Q. Did you have a suit in the supreme court of the District of Columbia within the last 12 months in which you were plaintiff, and where you were defeated on the ground of charging usury?

(Objected to as not pertinent.)

A. I did have a suit there. A man by the name of C. A. Pitcher brought to me a note drawn by himself to the order of one J. C. Lewis. He asked me to put my name on the note, so that he could get the money on it, and stated that he had deposited securities with M'r Lewis to indemnify him for his endorsement. I stated to him I would see M'r Lewis. I went to see Lewis; asked him if he was secured for the endorsement on Pitcher's note. He told me he was amply secured. He told me that

449 Pitcher had requested me to put my name on the paper so that he could get the money. He told me if I would do it and get the money for M'r Pitcher that I should have no trouble with it whatever; that if M'r Pitcher didn't pay it, he would, out of M'r Pitcher's funds. The note became due and a new note was brought, endorsed by the same party, to have it renewed. I again went to M'r Lewis and asked him if he still held those securities. He said he did hold ample security. I asked him how much. He told me $4,200. I asked him if the securities were good. He told me that they were, and that I would have no trouble with the matter at all. I put my name on the paper, and the note that was first given was taken out of the bank. The second note came due and was protested, I refusing to renew it. I paid the money. Neither Lewis nor Pitcher would pay, and I paid it—

450 (Objected to, as not responsive to the question)—as I always did every piece of endorsed paper which has obtained money that I ever put my name on. There were two dollars charged him at the bank for the loan of that money. I sued them both on the note, and Lewis plead usury. The case was decided by the jury in my favor, and the court, after instructing the jury to render a verdict accordingly, granted a new trial on some grounds; I don't know what.

Q. Did you ever loan to Peugh or any other person at 45 per cent. per annum except the loan of March, '57?

(Objected to.)

A. I never sought a loan from any man in my life—never sought to loan any man money—but since I retired from business, in 1859, I have frequently cashed notes for people at just what they would come

451 and say they would take off. I don't know whether it was 45 per cent. per annum or 500,000. But I don't think it was quite as much as 500,000.

Q. Was there any other money transaction between you and Peugh in the year 1857 except the loans of March and May upon this deed?

A. If there was, it was so small that I don't recollect it. I don't recollect of any.

Q. Didn't you require sufficient security in the way of real estate or collaterals whenever you made a loan to Peugh?

A. I thought I did at the time I made the transaction of the 4th of May, 1857, but I was afterwards convinced that I hadn't security for it.

Q. Did you or not state in your examination-in-chief that the

452 loan made to Peugh for 60 days on the 4th of May, 1857, was never extended, and that no extension was ever asked?

A. There was no extension ever asked and no extension ever made.

Q. How do you recollect that the transaction was on the 4th of May?

A. I judge it must have been on the 4th of May from the fact that the check given to M'r Peugh by me was dated on the 4th of May, 1857.

Q. If no extension of that loan was made or asked, was the deed not recorded before the 7th of September?

A. Because it was a matter entirely optional with myself when I put the deed on record, and if M'r Peugh had come I should willingly have taken the money, as I had already told him I would, without any interest, being satisfied in my own mind that the property was not worth that amount of money.

453 Q. Did you not postpone recording the deed at the expiration of the first 60 days from the 4th of May because Peugh paid you interest at that time?

A. M'r Peugh never paid me one cent of interest except what I have stated in the first transaction.

Q. I wish the examiner to ask the witness if that signature is his handwriting (showing him the paper subsequently introduced as Exhibit I, and pointing to the endorsement "H. S. Davis" on the back).

A. I would not swear that that was my signature although it has some appearance of it.

Q. Would swear that it isn't?

A. No.

Q. I wish the examiner to exhibit this paper (subsequently introduced as Exhibit K) and ask the witness if that is his signature

454 (pointing to the endorsement "H. S. Davis" on the back).

A. I should think that that was my signature except that "S," which does look a little strange.

Q. I want the witness to look at the body of that paper (the first shown) and say whether he did not receive that check from M'r Peugh and endorse it.

A. No, sir; never in the world did I. Never in the world did I receive that check from M'r Peugh and endorse it, to the best of my knowledge.

(M'r Merrick offers in evidence the paper filed herewith and marked "Exhibit I."

M'r Norris objects on the ground that there is no proof of its genuineness.

M'r Merrick offers in evidence the paper filed herewith and marked "Exhibit K."

455 M'r Norris objects on the ground that there is no proof of its genuineness.)

Q. You say that you are not able to swear that that is not your signature on Exhibit I?

A. I have stated that that did not look like any "S" that I was ever in the habit of making.

Q. Do the other letters look like your making?

A. Yes; the "H" and the "Davis" on it look like my making.

Q. Is it not sufficiently like it to refresh your recollection to enable you to say that it was a paper in your possession?

A. No, sir; I have no recollection of ever having a check from M'r Peugh in my life.

Q. Can you say positively that you never did have that paper and did not make that signature?

456 A. I do state to the best of my belief I never had that paper, for I have no knowledge of it in the world, of ever having a check from M'r Peugh.

Q. Is not your reason for saying that you never had that paper simply an absence of recollection in regard to having it?

Q. I don't remember M'r Peugh's ever giving me a check at all, and

he certainly never gave me one to pay any interest on that debt. And if this paper ever was in my possession it was for some other purpose, and not for any interest on this debt.

Q. Might it then have been in your possession for some other purpose?

A. It is possible, but I have no recollection of it.

Q. Look at the face of the paper and state whether it purports on its face to be for interest.

457 A. It does not, if I can read it.

Q. Was it not your reason for saying that you had never had the paper an impression that it purported to be a paper in payment of interest?

(Objected to, because the question assumes that the witness had had the paper.)

A. No, sir; it was not my impression that it was for interest.

Q. Are you willing to swear that you never had that paper in your possession; that that check was not given to you by M'r Peugh?

A. To the best of my knowledge, I have never had it in my hands, because I cannot recollect anything about it, and knowing the fact that M'r Peugh never paid me any interest on that debt; and if I ever did have it, it was for some other transaction now out of my memory.

458 One of those checks is the 6th of September, 1857. I put the deed on record on the 7th of September, 1857. If I had received interest from M'r Peugh on the 6th of September, 1857, I certainly would not have put the deed on record the next day, inasmuch as I had offered to give him up the deed for the principal—$1,500.

Q. My questions related to the checks, and not to what they were given for. It is because they have the appearance of being for interest and the May debt, and because you believe that no interest was paid on the debt, that you declare that they never were in your possession?

(Objected to, because the question assumes that he said they were never in his possession.)

A. It is not because I have stated that I have no recollection
459 of ever having these paper' in my possession, or because they might be supposed to be paid for interest that I have stated what I have in relation to them; and further, if they had been paid for interest, and I knew it, I should regard them as valueless, because of the final transaction between M'r Peugh and myself when he signed Exhibit A and gave me the receipt attached thereto in full for the payment of squares 910 and 911.

Q. I understand you to admit that these checks may have been in your possession.

A. I have stated that they may have been, but I don't remember anything about them. But if they were, it was for some other transaction apart from the one now in controversy.

Q. How do you know that they were for some transaction apart from the one now in controversy?

460 A. I only know that they were not for this.

Q. How do you know that they were not for this transaction between you and Peugh?

A. Because M'r Peugh never paid me a cent on this transaction; not one farthing.

Q. If you cannot recollect whether the papers were ever in your possession or not, might not your memory be at fault as to whether he ever paid you anything or not?

A. My memory, I am satisfied, is not at fault on that point, from the

fact which I have heretofore stated in regard to this transaction, and particularly that check on the 6th of September, 1857.

Q. Your memory, then, that he never paid you anything on this transaction, is a deduction from facts and not a recollection of facts.

461 A. I recollect distinctly that he never paid me anything on the transaction.

Without concluding the cross-examination of this witness the further examination of witnesses on behalf of the defendant was postponed until Friday, the 5th inst., at the same place, at 7 o'clock p. m. Adjourned.

FRIDAY, *November 5th*, 1869.

Owing to the examiner's sickness the further examination of witnesses on behalf of the defendant was postponed until Monday, the 8th inst., at the same place, at 7 o'clock p. m.

MONDAY, *November 8th*, 1869.

By consent, the further examination of witnesses on behalf of the defendant was postponed until after the close of the present term of the c't in bank.

462 FRIDAY, *November* 19th, 1869.

The cross-examination of M'r Davis was, by consent, resumed at 7 o'clock p. m.

Mess'rs Davidge and Norris appeared for defendant, and Mess'rs Merrick and Stanton for the plaintiff.

M'r Merrick continued:

Cross-examination:

Q. When were you first notified of the suits brought by Wiltberger for this property?

A. I have no means of telling exactly the time of the notification of the suits being brought by Wiltberger. I think it was some time in January, 1858.

Q. You have spoken of Peugh's liability to you for costs in those suits, and for expenses otherwise incurred with this property; state at how much you estimate the debt.

463 (Objected to by M'r Davidge, inasmuch as it assumes a debt to which the witness never testified.)

A. I can only answer that question by the examination of the records of costs and the fees I have paid counsel, which I have not done; 13 years, or about 13 years, having elapsed it is impossible for me to carry in my memory all the items paid for in the suits brought by Wiltberger.

Q. State how much that account was, as near as you can fix it.

A. I can fix no amount without going over the records and papers.

Q. Can you say whether it was under $1,000 or not?

A. I will not say what it was, because I can't say. I am perfectly willing to go over the records and make the examination.

Q. Have you any recollection of the amount you paid out on

464 account of these suits and other matters connected with the land?

A. I have not.

Q. You have stated that you paid some taxes for which Peugh was liable; now state how much that was.

(Objected to, as it imputes to the witness what he never said.)

A. I cannot.

Q. Didn't you state, in your examination heretofore, that you had

paid taxes, or bought certificates of tax-sales, for which Peugh was liable?

(Objected to.)

A. If I stated, in my examination-in-chief, that Peugh was liable for these taxes, the statement should have been that the property was liable for taxes after my purchase from Peugh.

Q. Didn't you state that Peugh was liable to you for the amount
465 that you had paid for those certificates, and that that constituted part of the debt of which you spoke in your examination-in-chief some nights ago?

A. Under M'r Peugh's covenant to *to* me, he is liable for all that I paid out in counsel fees, court fees, taxes which accrued prior to the time, &c.

Q. Can you say whether all this together amounted to one, two, three, four, five, six, seven, eight, or nine hundred dollars?

A. I can say nothing about it unless I examine the papers and records, which I have not done, as I before stated.

Q. What counsel did you employ?

A. In what case?

Q. What counsel did you employ in the Wiltberger suits?

A. M'r Peugh had previously put the papers that he had in the
466 hands of M'r Redin. I employed M'r Carlisle and M'r Davidge, and they three, Redin, Carlisle, and Davidge attended to the case.

Q. Did you pay each of these counsel counsel-fees?

A. I did.

Q. Did you pay them for attending to the case in the Supreme Court of the United States as well as in the court below?

A. I did not. M'r Carlisle and M'r Davidge was to attend to this case in the Supreme Court. The matter was left principally in the hands of M'r Carlisle. I spoke to M'r Carlisle several times during the five years that it was lying there. He advised me that as the case had never been docketed, that if I didn't want to sell the property, I had just better
467 let it lay there; that he thought it wouldn't be called up by the other side, and would finally be dismissed. I followed the advice of M'r Carlisle. After the lapse of five years I met M'r Peugh in the street one day, and he told me that he had the case dismissed; that he saw M'r Gillette up at the Supreme Court, and got him to make the motion to dismiss the case. I asked him why he got M'r Gillette to do it; that he knew that M'r Carlisle was my attorney there, and why he didn't ask M'r Carlisle to make the motion? He told me he looked around for M'r Carlisle to make the motion, but couldn't find him, and got M'r Gillette to make the motion, for which he paid him, he said, one hundred dollars.

I told him I thought it was treating M'r Carlisle bad; that he
468 was entitled to the fee, as he had been attending to this business. I afterwards called on M'r Carlisle and told him what M'r Peugh had told me, and offered to pay him for his services, and he declined to take anything. In the interview with M'r Peugh on the street he never intimated that he had any further interest in the matter——

(Objected to as not responsive.)

——but when I told him that M'r Carlisle should have the fee, he says: "Never mind," he says, "it is all settled now," or some remark to that effect. And M'r Peugh, during the five years or more that this case was in the Supreme Court, never mentioned it to me but once, and that on the street, when he asked me how I was a-getting on with the case in the Supreme Court. I replied to him that M'r Carlisle had ad-
469 vised me that if I didn't want to sell the property I had better

let it lay there; that he thought that the other side would never call it up, and that at the proper time it would be dismissed.

(So much of the answer as is not responsive to the question objected to.)

Q. When did you purchase the tax-certificates filed as Exhibits F and G to your deposition?

A. I have no recollection what time I purchased the tax-certificates. The tax-certificates bear interest at ten per cent. from the time of sale by the corporation, and it was therefore not necessary for me to notice the date at which I purchased them.

(The reasoning of the witness and the matter not responsive to the answer in the above question objected to.)

Q. Did you purchase them in the last five years?

470 A. I couldn't say when I purchased them, sir; but I should think it was longer than five years ago.

Q. Was it longer than eight years ago?

A. I should think it was. I have no means of telling, at all, though.

Q. How much did you pay for the certificate you purchased from M'r Phillip, marked "Exhibit F"?

A. I can't tell what I paid for it; but whatever time it was I paid it, I paid him the amount of the purchase-money and ten per cent. interest for the time he had had it.

Q. Did you purchase it directly from M'r Phillip yourself and pay him for the certificate?

471 A. I can't say whether I did or not. My impression is, that I did. It is a long time ago, but whether I purch'ed it myself or not, I paid the money, as I have before stated.

Q. You recollect that you paid the money, do you?

A. I do.

Q. Did you purchase the tax-certificate marked "G" from M'r King yourself and pay him for it?

A. My answer would be the same as in the former case.

Q. Do you recollect paying either of these men any money?

A. I recollect distinctly paying the money for the certificates.

Q. Do you recollect whom you paid it to?

A. I do not.

Q. Do you recollect that you didn't pay these either to King or Phillip?

(Objected to.)

472 A. I don't. I don't think that it is likely at all that I could have had those certificates without paying for them, and I am certain I did pay for them.

Q. Do you recollect that you paid for them, or are you certain that you paid for them because you think you could not have had them without paying for them?

(Objected to.)

A. I know I paid for them, no matter in what shape or by what means they came into my hands.

Q. Is this knowledge that you paid for them a matter of recollection of a fact?

A. It's recollection.

Q. State any of the circumstances connected with either of the payments.

A. I can recollect nothing more about it than that I paid the money.

473 Q. Do you recollect whether you paid for them in money or in something else?

A. I have no recollection of anything else but money that I paid them in.

Q. Did you pay for them in cash or by check?

(Objected to.)

A. My impression is that I paid in money.

Q. If, in February, 1858, you purchased out absolutely all Peugh's remaining right in the property in question, why was there not another deed executed; the first being, as you have stated, only as a mortgage?

A. Because I was advised from the statement of M'r Peugh and myself to M'r W. H. Ward, that having a deed already on record, that the paper he drew up in our presence, signed by M'r Peugh, witnessed by M'r Ward and M'r Mohun, and the receipt in full attached to the
474 same paper for the two squares, was all that was necessary to make me a perfect title. I believed it at the time, and still believe it, and so did M'r Peugh.

Q. When was that deed put upon record?

(Objected to, as the record will show.)

A. It was put on record, according to the records, on the 7th of September, 1857; that is my recollection.

Q. How long before putting it upon record did you demand payment of the debt from M'r Peugh?

A. When the 60 days expired M'r Peugh didn't call to see me at all. I called upon him. He told me he couldn't pay. I, several times before putting the deed upon record, told M'r Peugh that I would take
475 the $1,500 that I had advanced him, without interest for the time that he had had the money, and I offered to do the same thing after the suits by Wiltberger were brought, when he demanded of me $500 for his equity in these squares. I couldn't state how long before I put the deed on record it was when I last spoke to M'r Peugh on the subject.

Q. When he demanded $500 for his equity, as you state, did you say to him that you would be glad to, *but it* but couldn't give that for it?

A. I didn't, but on the contrary stated to M'r Peugh, as between gentlemen and honest fair dealing, he had no equity there, but he didn't seem to appreciate at all what was honesty or fair dealing between man and man, and extorted from me $500, which, if he was an honest man, he'd pay me now.

476 Q. Have you not stated in your examination-in-chief that when Peugh ascertained your claims he offered to pay you everything and one per cent. a month for the time that you had been out of any money in connection with this matter?

A. That's a question which cuts two ways. In the first place the question assumes that Peugh never supposed that I had any claim on this property; secondly, it might be inferred that Peugh had ascertained from me the costs of the suit and what I had paid about this property. I would like for the question to be put singly one way or the other.

Q. The question is a very simple one, and I ask that it be repeated. (Which was done by the examiner.)

A. Then I answer that M'r Peugh never ascertained from me
477 nor never asked me what my claim was on that property, but M'r Peugh came to me and told me that he would pay me back all the money that I had advanced in the purchase of this property and defending the suits, and one per cent. on the whole amount expended.

He stated that this property had been purchased with his wife's money, and that if he didn't get it back he believed it would kill her. I replied to him that "She ought not to have signed the deed if she didn't want to part with it," and that it was no time after the lapse of about 8 years for him to come to me with such a "cock and bull story," and that he never would have come to me if the property hadn't have advanced in value some.

Q. When was this conversation?

478 A. It is impossible for me to fix the date, but it was shortly before M'r Peugh had that suit instituted in the name of Samuel Cole against himself and me. I think the Cole suit was brought in October, 1865.

Q. Had you not just before this conversation sent a messenger to M'r Peugh in regard to this property?

A. I did. After M'r Peugh had offered me the one per cent. as before stated——

(M'r Merrick objects to matter not responsive to the question.)

——he claimed that he had an equity in the property still, very much to my astonishment, which I denied; and in order to set the matter at rest I put the covenant in the hands of Charles H. Winder and asked him to read it to M'r Peugh; that I believed it was possible that he had forgotten it. M'r Winder on his return told me that he read it to him.

479 (What Winder says objected to.)

Q. Did you not send Winder to Peugh before you placed the covenant in Winder's hands?

A. I think not. I don't remember doing so.

Q. Did you send anybody to him?

A. I have no recollection of sending anybody to him but M'r Winder.

Q. Did you send to him before the conversation you have spoken of in which the offer of one per cent. was made to you, or after the conversation?

A. It was after the conversation, sir.

Q. Have you not testified in this examination and in the examination-in-chief that you sent a gentleman to M'r Peugh in regard to this matter before this conversation took place?

A. No, sir; I testified to no such thing, and if it is down there

480 in that way it is wrong. I couldn't send a messenger to a man about a piece of property that I had held for 8 years, a deed for, settled for, and paid for; had no idea that he had ever pretended or harbored in his heart any claim to it.

(So much of the answer as is not responsive to the question objected to.)

Q. At the time of this conversation do you mean to say that you had no idea that M'r Peugh laid claim to this property?

A. I had no other idea but what I got from M'r Stone. It all happened about the same time M'r Stone told me——

(Objected to.)

——that M'r Peugh had been to see him about bringing a suit for this property in the name of Samuel Cole, of New York. This was

481 after the conversation between Peugh and myself. The conversation between M'r Peugh and myself grew out of the fact that he had just prior to that time got this man Simms to put a house on the place. As soon as Simms found that the property was mine and became *and became* my tenant, M'r Peugh came to see me, when the conversation in regard to the one per cent. and so on took place. That was the

first knowledge I had—the placing of Simms on the property—that Mr. Peugh ever laid any claim to it. And no gentleman or honest man—

(Objected to as inadmissible and in contempt of the authority of the court.)

——and no man short of a scoundrel and a thief would ever have tried to have obtained the property or the possession of the property in the way that Peugh did that.

482 (Objected to as improper and scandalous.)

Q. Then at the time of the conversation to which you have testified with Peugh, you did know from what had occurred with Simms that Peugh laid claim to the property?

A. All I knew was through Simms. He stated that Peugh had got him to build a house there; told him that it was his property; that he might fence in as much land as he wanted and have it rent free for 5 years. This conversation with Peugh took place in a day or two after Simms became my tenant.

Q. You have said that Peugh extorted $500 from you. What do you mean by saying that he extorted $500 when you purchased as you claim for that consideration his equity of redemption?

483 A. I say that he extorted that money from me because he is an unjust man and won't stick to his contracts. That contract between us was that if he didn't pay that money within 60 days the property was to be mine, and that was to be the end of it.

Q. Did you, in the conversation in which he proposed, as you state, to sell for $500, claim the property as being already *as* your own and represent to him that he was extorting $500 from you?

A. I did not only claim that he was extorting the $500 from me, but that it was a piece of high-handed injustice on his part to make any such claim, and I refused most positively to give him $500 unless he would enter into a covenant besides to pay the expenses of all the

484 suits that might be brought against the property and to make my title fee-simple warranty, which the covenent made and signed by him evidently sets forth.

Q. Do you mean to say that you told him that he had no rights in that property at all?

A. I did tell him so over and over, and it was not till the second or third time he pressed it that I consented to that.

Q. Did you or not demand from him payment of the deed after you put the deed on record?

A. I never did, nor the subject between him and myself was never referred to, only in the two cases that I have named, viz, his asking me on one occasion how I got along with the suit in the Supreme Court, and his statement to me about having it dismissed. Of course I

485 don't refer to the final settlement there about the matter, for that occur'ed after I put the deed on record.

Q. When the Wiltberger suits were first brought, did you not then make a demand on him for the repayment of the money?

A. I didn't, to the best of my recollection, but, as before stated, I told him when he came and demanded the $500 I would take the $1,500 loaned him, without interest, and he refused to give it to me.

Q. Have you not stated in your answer in this cause, as follows: "On or about the 16th of January, 1858, the said Charles H. Wiltberger instituted two suits in ejectment against this defendant in the late circuit court of the District of Columbia, for the recovery of said squares

486 of ground. Thereupon this defendant again demanded payment of his debt, but the complainant failed and refused to pay said debt"?

A. That seems to be so in the answer, but I state here now, under oath, that I don't remember of asking M'r Peugh to do but one thing in that matter. When the suit was brought, my attorney, M'r Carlisle, was not in court. M'r Bradley, who was on the other side, made a motion to the court, as I was informed and believe to be true, to set this case—the Wiltberger case—for trial next day. M'r Davidge had not been employed in the case by me, but he voluntarily got up and answered to the case, to keep it from going by default. He sent me word what he had done and that I must be ready next day to try the suit at 11 o'clock.

487 (M'r Merrick objects to what passed between the witness and his counsel.)

I went immediately to see M'r Carlisle, and he asked me where the papers were at. I told him that M'r Peugh had told me that they were in the hands of M'r Redin. I wasn't acquainted with M'r Redin sufficiently—I knew him when I saw him—to get the papers. I also understood that he was sick abed. I went and found M'r Peugh, and asked him to get the papers from M'r Redin, which he said he would do. He afterwards informed me, on the evening of the same day, that he had seen M'r Redin, that he was much better and would be in court next morning with the papers. I asked M'r Carlisle if he was ready to go on with the suit; he said he was. The suit was taken up and

488 tried and decided in my favor. I wouldn't dismiss M'r Davidge from the suit after volunteering to stop the judgment from going by default, and that's the way he came in it.

(M'r Merrick objects to all this answer, except the first one or two sentences, as not responsive to the question and utterly irrelevant to any inquiry made by it.)

(Witness resumes:) I think, on reflection, that M'r Badley asked for a judgment by default that day, and that M'r Davidge voluntarily got up and answered for it, and it was set for the next day at 11 o'clock.

Q. Was the Wiltberger suit tried in the circuit court before the signing of the indemnity bond marked "Exhibit A" in the examination?

(Objected to, as the record will show.)

489 Q. My impression is—I have not examined the records myself —my impression is, that the case was tried at the May term of the old circuit court, in May, 1858, and the covenant from M'r Peugh to me was signed on the 9th of February, 1858. That's my recollection.

Q. My question before the last related to what you did in regard to the debt on this property, not at the time the suit was tried, but when you first learned of the suits being brought as stated in your answer on or about the 16th of January, 1858, and whether your answer is true in its statement that you then demanded from M'r Peugh payment of the debt?

A. To the best of my recollection and belief, I made no demand on M'r Peugh at the time the suits were brought, but what I have

490 stated for the papers. As to the record, I left that to M'r Davidge to look over and see what time the suits were brought, and I presume that is correct as stated in the answer. And if I had scanned that answer in that particular, I should have had it correct. But there was so many motions made in court to push answers through there, that my attorney nor myself scarcely had time to get 'em up at all.

Q. Do you recollect swearing to your answer?

A. I do, but this matter was so old that at the time many things had slipped my memory that I could not possibly recall, and it is from reflection and study that I have been able to arrive at the truth in this

matter, if I have been able at all to get all the truth that [illegible] in it.

491 Q. I would call your attention to the fact that the allegation in your answer, that you demanded from Peugh payment of the money when the Wiltberger suits were brought, is not a fair [illegible] recollection to recall a fact that the assertion of an affirmative fact as within your recollection. How do you account for its presence in your answer?

A. Owing to the lapse of time, that I gave, no doubt, my best attention at the time the answer was drawn, but the long space of time intervening, and being so suddenly called on to have that answer prepared, that it was impossible for me to recollect or state all the facts as they occurred.

Q. Am I to understand from you that the unfortunate presence of the surrounding circumstances under which this answer was pre-

492 pared and the remote period from the events at which it was written renders it an uncertain and not entirely reliable statement of the matters it contains?

A. I think the statement read there in the answer is incorrect, and I believe that if the time generally allowed for filing answers had been allowed in this case, that that statement would not have been in that answer.

Q. Are there any other erroneous statements in it?

(Objected to.)

A. Not that I know of. And if you can find one I will deny it right off, no matter whether it makes for me or against me.

Q. Have you attended the examination of all the witnesses in this case and heard their evidence?

493 A. I think I have heard the evidence of all the witnesses, except one night I had to go out for a while; I soon returned again, and I disremember what witness was on the stand. I was out but a few minutes, however.

Without concluding the examination of this witness, the further examination of witnesses on behalf of the defendant was postponed until Tuesday, the 23d inst., at 7 o'clock p. m. And thereupon, at 9 o'clock and 10 minutes p. m., adjourned.

TUESDAY, *November 23d*, 1869.

Met pursuant to adjournment, but at the suggestion of defendant's counsel, adjourned to the same place, at 7 o'clock on Thursday evening, November 25th inst.

THURSDAY, *November 25th*, 1869.

Met pursuant to adjournment.

494 Mess'rs Davidge and Norris appeared for the defendant. M'r Stanton appeared for the plaintiff, and continued the cross-examination of M'r Davis.

Cross-examination:

Q. Look at Exhibit E, the Simms lease, and say when it was executed.

A. The paper shows itself what time it was executed. This paper shows that it was executed the 11th day of October, 1865, and I presume that is correct.

Q. How soon after you became aware that Simms was on that property was this instrument, Exhibit E, executed?

A. Very shortly afterwards. It is impossible for me to state the ex-

act period intervening between my knowledge of his having the house there and the execution of the instrument between Simms
495 and myself.

Q. Prior to that time did you make any lease of the property to anybody or authorize any one to occupy it?

A. I didn't. I did authorize the sale of it, but didn't effect it.

(Mr Stanton objects to so much of the above answer as is not responsive to the question.)

Q. Look at the lease Exhibit E, and state from what date rent was to be paid to you by Simms.

A. According to this instrument he was to pay rent from the 1st of July, 1865.

Q. Why was the rent to begin at that time?

A. Because Simms told me himself that he had occupied the place from that time, the 1st of July, 1865, whereupon I compelled him to pay the rent from the time of his occupation, which he did up to
496 the time of the date of this instrument, and I think he paid a month's rent afterwards. I have no means of showing that, however.

Q. I read from your answer: "This defendant further says, that the purchase money paid by him as aforesaid was the full value of the said squares of ground under the circumstances surrounding the same, and in view of the depression in value of real estate throughout the country." What circumstances surrounding the same do you refer to in that passage?

A. I have stated here that I paid the full value of that property at the time, and that I don't believe that it would have brought $1,500—under the hammer—cash. So well was I convinced of that fact, as I have before stated, that I proposed to Peugh to take the $1,500
497 which I had advanced on the ground without interest, in full settlement of the transaction, and that the $500 which I paid him on what he claimed to be his equitable right was unjustly obtained by him, and that the $500 was, in my opinion and firm belief, obtained from me over and above the actual value of the property at that time, independent of the two suits of Wiltberger then against me, brought by the said Wiltberger to obtain the two squares of ground, which I had to defend with the risk of losing them.

(Mr Stanton objects to so much of the answer as is not responsive, and repeats the question.)

Q. I read from your answer: "This defendant further says, that the purchase-money paid by him, as aforesaid, was the full value of the said squares of ground under the circumstances surrounding the
498 same, and in view of the depression in value of real estate throughout the country." What "circumstances surrounding the same" do you refer to in that passage?

A. I referred to the depressed value of real estate, and especially to "outside property," as this *it* was at the time, in the city of Washington. Money matters at that time were exceedingly tight; the banks had all closed their doors; money was hard to obtain, which had a tendency to depreciate real estate, and did depreciate it to a very large extent.

Q. Did you refer to any "circumstances surrounding the same" other than this pretended depression in the value of real estate?

(Objected to, as the witness had already said that he referred, among other things, to the situation of the property.)

499 A. I didn't refer to any pretended [illegible] the property, owing to the [illegible] cial crisis in the country—had greatly depreciated, and I will [illegible] that I believed I paid more for the property than it was [illegible] didn't want it, but circumstances compelled me to take it, because of Peugh's failure to meet his obligations.

Q. In the expression, "circumstances surrounding the same," do you include the previous transactions between Peugh and yourself, or not?

(Objected to because indefinite.)

A. What transactions do you refer to, sir? You speak of "previous transactions." I never had but one transaction with Peugh prior to the one now in controversy.

Q. This passage in your answer concerning which I have been
500 interrogating you occurs immediately after your narration regarding the payment by you of $500 to Peugh, and the execution by him of the covenant, Exhibit A. In that expression, "circumstances surrounding the same," do you refer to the transactions between you and Peugh prior to the time of that payment and the execution of that instrument?

A. I don't understand that question. I have fully stated, in my judgment, all that is necessary and requisite to satisfy any reasonable person of what I mean by "the circumstances" at the time alluded to.

Q. Do you, or not, include among these "circumstances" referred to in that passage the transactions between Peugh and yourself respecting that property?

501 (Objected to by Mr Davidge for the reason that, like preceding questions, it is indefinite.)

A. I refer to the transactions as heretofore stated in previous answers.

Q. Do you mean that in that passage you referred to no other "circumstances" than those indicated in your answers in reply to questions regarding that passage in the answer to the bill?

A. I referred to no "circumstances" that I have not before stated.

Q. Do you know the handwriting of the endorsement in lead-pencil on the covenant, Exhibit A; and if so, whose is it?

A. I wrote it myself.

Q. What is it?

A. It is a mere heading of a paper, to pick it out in a file of papers. The words are "Peugh's bond."

Q. Do you know when you wrote it?

502 A. Well, I shouldn't think I did. Over 13 years ago. I can't remember.

Q. Did you say that Peugh told you that the property in controversy was bought with his wife's money?

A. I did say that after Simms became my tenant, that Peugh called to see me, and offered me or offered to pay me one per cent. for the money from the time that I had paid it out, and I told him that I'd do no such thing. He then began to whine, and said the property was bought with his wife's money, and that he believed it would kill her if she didn't get the property back. I then told him that she oughtn't to have sold it and signed the deed. That is about as near as I can recollect what I have stated heretofore in this case.

Q. When did this depression of the value of property, to which
503 you have testified, begin, and how long did it continue?

A. Financial matters, as well as I can remember, commenced tightening some time in 1856, and they got tighter and tighter up to the time the banks suspended—about the middle of 1857, as near as I can

recollect—up to the time the banks suspended specie payment in 1857, and that was about the middle of 1857, when they suspended. I can't recollect the dates. There was really a panic from the time I speak of in 1856, which continued up to 1859. The severest part of it was in '57 & '58. In my bank-account I kept an account of the specie deposited and the specie drawn out, and the same with the paper, and I believe it was the general custom at the time with others who kept bank-
504 accounts. Of course I state this from my best memory.

Q. In 1859 did property get back to what was its value before the beginning of the depression?

A. No, sir; and didn't get back until I think some time in 1863. I think about that time property began to improve again.

Q. Was the improvement through '58 & '59 sudden or gradual?

A. I don't think there was much improvement at all. I think there was a very slight improvement in '59.

Q. Do you mean to say that after the depression of which you have testified, the value of these two squares did not advance to what it previously was, until 1863?

A. I do say that there never was a day from the time that I
505 purchased that property of M'r Peugh until the rise of property during the war—which I think was about '63 that it began to rise—that those two squares of ground ever would have brought, under the hammer, in cash, the amount that I paid for them—saying nothing about the expenses I have been to, the time and trouble of defending the suits which was brought against me in reference to this property, and if anybody had offered me that for the property I would have taken it; I mean the $2,000.

Q. Did or did not the value of the property advance to what it was before the depression earlier than 1863?

A. I have just stated that if anybody had offered me $2,000 for the property before the advance after the war broke out I would
506 have taken it; that is the value I placed upon it in my own interest, and should gladly have taken it if I could have got it.

Q. Have you been involved in any litigation with one Patrick Byrnes respecting usury exacted of him?

(Objected to by M'r Davidge, of counsel for the defendant, who advises him to refuse to answer it.)

A. I shall follow the advice of my counsel.

Q. Did you consider this property as absolutely yours upon the default of the payment of the principal at the end of the second loan?

A. I certainly did.

Q. Is that your opinion still?

A. That's my opinion still, sir; and if I had been dealing with an honorable man I should never have heard anything more about it.
507 But a man who owns large possessions and covers up everything he has got to defraud his creditors, I don't wonder at his transaction in this matter.

(Objected to as to all that is not responsive to the question as irrelevant and scandalous.)

Q. Do you remember or no who drew the deed from Peugh to you when the first loan on this property was negotiated?

A. I don't know who drew it. It was brought to me executed by Peugh himself.

Q. Did you see an abstract of the title to that property about the time the first loan was made?

A. I never did. M'r Peugh referred me to W'm H. Ward, who he said

had examined the property I think for Buckner Bayliss. I called on
M'r Ward and asked him if he had examined the title to the
508 property. He told me that he had examined it for Bayliss, and
that the title in Bayliss was good. He said further, that Wainwright held tax-titles on the property and threatened to bring suit, or had threatened to bring suit, but that his tax-title was good for nothing, and he doubted very much whether he would ever attempt to recover the property on his tax-title.

Q. Did you mention to M'r Ward the negotiation at that time pending between Peugh and yourself?

A. I have no recollection of stating to M'r Ward anything about the transaction that Peugh wanted me to enter into, but I told him that M'r Peugh had referred me to him. This was the first transaction between Peugh and myself when I called on M'r Ward at Peugh's request.

509 Q. Do you know in whose handwriting the deed from Peugh to yourself is?

A. I just answered that question a few moments ago. I stated that M'r Peugh brought the deed to me executed. I don't know in whose handwriting it is.

Q. Do you know in whose handwriting is the endorsement on the paper shown you? (Producing the paper filed herewith, and marked "Exhibit L.")

A. It may be my handwriting and it may not. I wouldn't swear to my own handwriting any time, for I have no particular form of writing.

Q. Does it not resemble your handwriting?

A. It does resemble it in part; but I can't say it is my handwriting.

Q. Will you swear it is not?

510 A. No. I told you just now I wouldn't swear one way or the other about my handwriting.

Q. Have you any opinion or not on the subject whether or not it is your handwriting?

A. Nothing more than I have stated, sir.

Q. What is the endorsement?

A. "Ward's examination of Peugh's two squares."

Q. Do you know the handwriting of the body of the paper?

A. Yes, sir; I should think that was W. H. Ward's handwriting, but I have no recollection of ever seeing this paper before, and if I have ever seen it, the lapse of time prevents me from any recollection of it.

H. S. DAVIS.

511 Subscribed and sworn to before me this 25th Nov., 1869.

R. D. MUSSEY,
Ex'r S. C. D. C.

M'r Stanton announced the cross-examination of the witness closed.

The further examination of witnesses on behalf of the defendant was postponed until Wednesday next, the 1st prox., at the same place, at 7 o'clock p. m.

And thereupon, at 9 o'clock p. m., adjourned.

WEDNESDAY, *December 1st*, 1869.

Adjourned until the 10th inst.

FRIDAY, *December 10th*, 1869.

Met as by adjournment, but, without examination of witnesses, adjourned until further notice.

512 TUESDAY, *February* 15*th*, 1870.

Met pursuant to notice, but adjourned without examination of witnesses.

THURSDAY, *March* 3*d*, 1870.

Met pursuant to agreement.

M'r Stanton appeared for the plaintiff, and Messrs. Davidge and Norris for the defendants.

Redirect examination of Henry S. Davis.

Henry S. Davis, being again examined by M'r Davidge, says:

Q. In your cross-examination you have stated that Peugh gave you notes of Buell and Blanchard, as collateral for the loan of $200, and that these notes were deposited by you in the bank for collection. Have you, since giving your testimony, made an examination of your
513 bank-book and recalled as far as you could the transaction? If yea, state the result.

A. I have examined my bank-book and find I was mistaken; that these notes of Buell and Blanchard were never put in the bank, but it was the notes of Martin Buell that I had taken, endorsed by Charles E. and J. T. Walker. I stated that some gentleman whom I could not recall to mind came in the bank with M'r Buell and settled up the notes of Buell and Blanchard. On examination of my bank-book I find that it was not the notes of Buell and Blanchard, but the notes of Martin Buell, and that it was Chas. E. Walker that came into the bank with M'r Buell and settled up the account. There were three notes of M'r Buell held by me, two of which had been protested, and I can
514 trace no protest for the other one, but a final settlement of his notes was made by himself and M'r Walker. Which one of them paid the money I can't tell.

Q. Was Martin Buell one of the firm of Buell and Blanchard?

A. I have always understood so.

Q. I wish you to look at the two checks marked "I K.," exhibited to you on your cross-examination, and state fully what means you have taken to ascertain the genuineness of the endorsements on said checks, alleged to be in your handwriting, and with what result?

A. I have made a thorough examination of all my papers and accounts and bank-book at the time these checks purport to have been given to me. I can find no data either in my bank-book or in any account where ever any such checks were given to me by M'r Peugh,
515 nor can I remember or trace any transaction that has ever taken place between us except those heretofore stated, and my candid opinion and belief is that the checks are forgeries, as I believe I could from the researches I have made trace them in some way or other, which I have failed to do.

Q. You have also stated in your cross-examination that Peugh instigated the institution of the suit in chancery brought by Samuel Cole against you and himself in relation to the property in controversy. State what means you have of knowing that he instigated the said suit; state fully.

A. I have good reason to believe that M'r Peugh instigated this suit without the knowledge or consent of M'r Cole, and I have some data here on which I found that opinion or belief.

516 (M'r Stanton objects to the question as not proper on the redirect examination and to the answer as inadmissible.)

Q. What are those data?

A. They are two letters from Mr Stone to Mr Cole, and a letter from Mr Cole to me on the subject (producing the papers last mentioned, marked respectively Exhibits M, N, & O, R. D. M).

(Objected to.)

Q. Do you know the handwriting of these letters; and if yes, state in whose handwriting they are.

A. I don't know the handwriting of Mr Stone. I have seen his signature frequently, but I am not sufficiently versed in signatures to swear to any man's signature. From the frequent and long correspon-
517 ence I have had with Mr Cole, I feel very confident that he wrote and signed this letter.

Q. How did this letter from Cole come into your possession?

A. I wrote to Mr Cole for information in regard to this suit, which was brought in his name, and he replied in this letter, and sent me the two letters from Stone to him.

(Objected to.)

Q. Has the complainant, since the execution of the sealed instrument offered in evidence, whereby he relinquished any interest in the property, ever tendered repayment of what he now alleges to have been a loan, or ever requested any statement of what in the bill he calls rents and profits?

(Objected to as improper upon the redirect examination.)

A. He never has tendered any payment, either orally or in
518 writing. He has never named to me in any way anything in relation to rents and *and* profits, as he well knew that there was no rents and profits arising or coming in from those squares of ground. The only thing he ever said to me on the subject, except what I have heretofore stated in my testimony, was a tender to me of the amount of money paid out by me, with one per cent. interest from the time of payment, and that was done just prior to the suit instituted in the name of Samuel Cole, which has been referred to in these proceedings.

Q. What claim has he set up to property save in the conversation you have mentioned, and in the secret efforts through the tenant he put in possession, and by means of the Cole suit?

(Objected to.)

519 A. None whatever, directly or indirectly, that has come to my knowledge.

Recross-examination.

Being further examined by Mr Stanton, he says:

Q. Have you ascertained the amount of the three Martin Buell notes?

A. If I had my bank-book here I could give you the exact amount; but to the best of my recollection one was about $1,100 and one was $990-odd dollars.

Q. Did you also receive notes from Buell and Blanchard, or were those from Mr Buell the only notes received in the transaction with Peugh to which you have referred in your previous examination?

A. I received from Mr Peugh, to the best of my knowledge, two notes of Buell and Blanchard as collateral security for a payment of
520 200 dollars which I loaned him. I have fully stated that I held those notes until they were about running out of date, and couldn't get the money either from Peugh or Buell and Blanchard, and then I told them that they must either pay the money or renew the notes, or I should bring suit. They did renew the notes, and I find that I never put those notes in the bank. It don't appear on my bank-book, which is the only evidence I have of it. These notes were finally settled, but at what

time, or where or how, I have no means knowing, neither do I know the amount. The time has been so long that it is impossible for me to carry it in my head.

Q. Are you able to identify and recollect and find record of
521 every bank-check in which you are named as payee, and which, being endorsed by you, was presented to the bank for payment?

A. I am not, sir; and I don't suppose there is a man living that would be. But there are circumstances about this transaction with M'r Peugh that I believe would enable me to satisfy myself conclusively whether those checks were ever paid to me or not. They don't appear on my bank-book as having been paid at the time stated or at any other period of time. I generally did my business in bank by depositing checks when I got them. I am as confident as I am that I am living that never was there a dollar of money paid to me over M'r Smithson's counter in this world, or to anybody else for me.

522 (M'r Stanton objects to so much of the above as is irrelevant, and inadmissible, and irresponsive.)

H. S. DAVIS.

Subscribed and sworn to before me this 3d day of March, A. D. 1870.
R. D. MUSSEY, *Examiner, &c.*

Statement of W. D. Davidge, esq.

W. D. DAVIDGE, Esq., being sworn, says:

I knew W'm J. Stone, j'r, for many years. We practiced at the same bar—that of the circuit court, District of Columbia. I have repeatedly seen him write, and state that beyond any doubt the two letters (Exhibits M & N, R. D. M.) are in his handwriting, excepting only the W. J. Stone at the top of one of them.

W. D. DAVIDGE.

(Objected to.)

Subscribed and sworn to before me this 22d day of July, A. D. 1872.
R. D. MUSSEY, *Examiner, &c.*

523 I certify that the foregoing depositions were all taken by me at the times and places specified, reduced to writing by me in the presence of the several witnesses, and by them, after being read over to them, or by them respectively, signed; and that before taking said depositions each witness was first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter whereof he should be examined; that I am not of counsel nor attorney for either of the parties to said cause, nor in any way interested in the event thereof; and that my fee for taking the same, amounting to $70, has been paid to me by the defendant.

Given under my hand and seal at Washington, D. C., this 20th day of July, 1872.

[SEAL.]

R. D. MUSSEY,
Examiner in Equity, Sup. C't D. C.

524 EXHIBIT A.—R. D. M.

Whereas the undersigned Samuel A. Peugh, of the city of Washington, in the District of Columbia, having heretofore sold and conveyed to Henry S. Davis, of the said city, two certain squares of ground in said city, the same being squares numbered nine hundred and ten (910) and nine hundred and eleven (911) in the said city, the said sale and conveyance having been by the said Peugh made with the full assurance

and promise of a good and indefeasible title in fee-simple; though the said conveyance contains only a special warranty, the said conveyance to said Davis bearing date on the fourth day of March, A. D. 1857, and being recorded on the seventh day of September, A. D. 1857;

525 And whereas the title to the said squares so conveyed as aforesaid to said Davis, having been now questioned and disputed, the said Peugh doth now, for himself, his heirs, executors, and administrators, promise, covenant, and agree, to and with the said Henry S. Davis, his heirs and assigns, in the manner following, that is, that he, the said Samuel A. Peugh, and his heirs, shall and will warrant and forever defend the said squares of ground and appurtenances, as conveyed as aforesaid, unto the said Henry S. Davis, his heirs and assigns, from and against the claim or claims of all persons whomsoever.

And further, that he, said Peugh, and his heirs, executors, and administrators, shall and will pay and refund to said Davis, his heirs or assigns, all and singular the loss, cost, damage, and expenses, in-

526 cluding the consideration in said deed or conveyance, which, or to which, the said Davis, his heirs or assigns, shall loose, incur, pay, or be subject to by reason of any claim or litigation against or on account of said squares of ground, or either of them.

And for the full and faithful observance and performance of all the covenants and agreements aforesaid, and for the payment of all the sum or sums of money as therein provided, in the manner prescribed as aforesaid, the said Samuel A. Peugh doth hereby bind himself, his heirs, executors, and administrators, and each and every of them, firmly by these presents.

In testimony whereof, the said Samuel A. Peugh doth hereunto set his hand and seal, on this ninth day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

S. A. PEUGH. [SEAL.]

527 Signed, sealed, and delivered in the presence of—
FRANCIS MOHUN.
W'M H. WARD.

WASHINGTON, D. C., *February 9th*, 1858.

Rec'd of Henry S. Davis two thousand dollars, the same being in full for the purchase of squares Nos. 910 and 911, in the city of Washington.
$2,000. S. A. PEUGH.

EXHIBIT B.—R. D. M.

WASHINGTON, *March 6th*, 1857.

Patriotic Bank of Washington, pay to S. A. Peugh, or order, seventeen hundred and forty dollars.
$1,740. H. S. DAVIS.

(Indorsement on back:) S. A. Peugh.

528 EXHIBIT C.—R. D. M.

WASHINGTON, *March 6th*, 1857.

Patriotic Bank of Washington, pay to S. A. Peugh, or order, two hundred and sixty dollars.
$260. H. S. DAVIS.

(Indorsement on back:) Pay to the order of Jonathan T. Walker.
6th March, 1857.
S. A. PEUGH.
J. T. WALKER.

EXHIBIT D.—R. D. M.

WASHINGTON, *May 4th*, 1857.

Patriotic Bank of Washington, pay to S. A. Peugh or order fifteen hundred dollars.

$1,500. H. S. DAVIS.

(Indorsement on back:) S. A. Peugh.

529 EXHIBIT E.—R. D. M.

[Fifty-cent int. rev. stamp, cancelled.]

Memorandum of agreement entered into this eleventh day of October, eighteen hundred and sixty-five, between Henry S. Davis, of the first part, and George Henry Simms, of the second part, both of the city of Washington, D. C., witnesseth:

That the said Henry S. Davis, for and in consideration of the monthly rental hereinafter named, hath leased unto the said George Henry Simms square numbered nine hundred and eleven (911), in the said city of Washington, from month to month, commencing on the first day of July, 1865, for the monthly rent of one dollar and fifty cents, payable on the first day of each and every month.

And the said George Henry Simms, on his part, hereby agrees to pay to the said Henry S. Davis the monthly rent of one dollar and
530 fifty cents for said square, payable on the first day of each and every month, beginning on the 1st day of July, 1865. And he hereby further agrees to vacate the said premises upon a written notice from said Henry S. Davis, of thirty days, yielding peaceable possession of the said premises to the said Henry S. Davis at the expiration of the term of such written notice.

And it is further understood and agreed between the parties hereto that at the expiration of this lease, as aforesaid, the said George Henry Simms shall have the right to remove his frame building from said square.

Witness the hands and seals of the *of the* parties hereto, this 11th day of October, 1865. Done in duplicate.

H. S. DAVIS, [SEAL.]

GEORGE HENRY his + mark. SIMMS. [SEAL.]

Signed & sealed in presence of—
CH. H. WINDER,
J. H. HILTON.

531 Received of the above-named George Henry Simms four dollars and fifty cents, being in full for rent of the aforementioned premises from 1st of July, 1865, to 1st October, 1865.

Signed in duplicate, this 11th October, 1865.

H. S. DAVIS.

EXHIBIT F.—R. D. M.

I, Robert J. Roche, do hereby certify that at a sale made by me, as collector of taxes for the city of Washington, on the seventeenth day of April, 1855, after public notice being given as required by law, did set up, expose, and sell by public sale all of square No. nine hundred and

ten (910), assessed in the name of C. H. Wiltberger, for taxes due the corporation of the said city on the same, for the following years, viz:

For the year 1854 ..... 9 30

$9 30

532 amounting in the whole to nine dollars and thirty cents, which, together with the expenses of the sale, amount to ten dollars and eighty-six cents, when W. H. Philip, being the highest bidder, became the purchaser thereof, at and for the sum of twelve dollars.

The receipt of the above taxes and expenses of sale is hereby acknowledged, subject, however, to redemption, as provided for by law.

Witness my hand and seal this twentieth day of April, in the year 1855.

R. J. ROCHE. [SEAL.]

Witness:
JNO. H. BARTLETT.

EXHIBIT G.—R. D. M.

I, Robert J. Roche, do certify that at a sale made by me, as collector of taxes for the city of Washington, on the seventeenth day
533 of April, 1855, after public notice being given as required by law, did set up, expose, and sell by public sale, all of square No. nine hundred and eleven (911), assessed in the name of C. H. Wiltberger for taxes due the corporation of the city on the same, for the following years, viz:

For the year 1854 ..... 11 05

$11 05

amounting in the whole to eleven dollars and five cents, which, together with the expenses of the sale, amount to twelve dollars and sixty-seven cents, when Z. M. P. King, being the highest bidder, became the purchaser thereof, at and for the sum of thirteen dollars. The receipt of the above taxes and expenses of sale is hereby acknowledged, subject, however, to redemption as provided for by law.

534 Witness my hand and seal this twentieth day of April, in the year 1855.

R. J. ROCHE. [SEAL.]

Witness:
JNO. H. BARTLETT.

EXHIBIT H.—R. D. M.

WASHINGTON, *Sept. 3d*, 1858.

Patriot Bank of Washington, pay to S. A. Peugh or order two hundred dollars.

$200.

H. S. DAVIS.

(Indorsement on back:) S. A. Peugh.

EXHIBIT I.—R. D. M.

WASHINGTON, D. C., *6th July*, 1857.

W'm T. Smithson, pay H. S. Davis or order one hundred & twelve dollars & fifty cents.

$112.50.

S. A. PEUGH.

(Indorsement on back:) H. S. Davis.

535 EXHIBIT K.—R. D. M.

WASHINGTON CITY, D. C., *6th Sept.*, 1857.

W'm T. Smithson, banker, pay H. S. Davis or order one hundred & twelve $\frac{50}{100}$.

$112.50.

S. A. PEUGH.

(Indorsement on back:) H. S. Davis.

EXHIBIT M.—R. D. M.

WASHINGTON CITY, *Febr.* 16, 1866.

DEAR SIR: I am satisfied that Peugh wishes to use you and your judgment for his advantage. I asked him to make an offer for your judgment, telling him that I would advise you to make a good discount for cash, but he cannot or will not do anything with it. I think that the suit had better be dismissed as it will only subject you to use-
536 less cost. Shall I have the suit dismissed? I hope to collect all the Towers' debt, but have not yet been able to do so.

Very respect'y,

W. J. STONE, JUN.

SAMUEL L. COLE, Esq.,
Lyons, Wayne Co., N. Y.

EXHIBIT N.—R. D. M.

WASHINGTON CITY, *April* 16, 1866.

DEAR SIR: Enclosed please find draft on New York to your order for $548.57, explained as follows:

Your claim on S. A. Peugh, with int	$1,133 40
½ thereof	566 70
Costs of jud	10 74
Comm	577 44
	28 87
	548 57

I sold the claim to Peugh for ½ and taxes, costs. This is within
537 the amount you were willing to discount. The chancery suit is to be dismissed. The sum of $28 87 above is in addition to the $50 you left with me, making my entire fee $78.81. I doubt whether anything can be made on the Mills' judg., although I hope to get some money on the Tower matter.

Very respect'y,

W. J. STONE, JUN.

S. COLE, Esq.,
Lyons, Wayne Co., N. Y.

EXHIBIT O.—B. D. M.

(In lead-pencil:) LYONS, *July* 26, 1869.

DEAR SIR: Yours of the 16th inst. was received during my absence from home. I returned on Saturday quite unwell. I had a judgment of about $1,133. I employed M'r Stone to try and collect it, and gave

him references to the matter the day I last left Washington, and
538 he, knowing the , said he would enter a bill in chancery, which he accordingly did, but I never knew until you were out here that you were included in the bill.

After some correspondence M'r Stone, he advised me that he did not think he could succeed in the case. I then wrote him to take whatever he could get, 25 or 50 per cent., and dismiss the case. In the mean time Peugh wrote me he had received a proposition from M'r Stone to compromise, and—but that he could do nothing in the matter. (Peugh's letter I [torn off] not fill.) I inclose M'r Stone's letter of Feb. 26, '66, in [torn off] he thinks Peugh wishes the case carried on at my [torn off] but you will see what M'r Stone thought and advised to [torn off] case dismissed, & it was so done on a compromise of 50 per cent. [torn off] letter April 16, '66. I have no other letters on file. If I [torn off] any further use, will cheerfully do so. My family are [torn off].

Yours, truly,

S. COLE.

539 *Testimony for def'd't.—Filed April* 3, 1874.

In the supreme court of the District of Columbia.

SAM'L A. PEUGH
vs.
HENRY S. DAVIS. } In equity. No. 1,713 Doc.

For defendant.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses begun and held on the 11 day of Nov., A. D. 1873, and continued from time to time, by adjournment or agreement, until the 1st day of April, A. D. 1874, when the within depositions were taken, I, John J. Johnson, an examiner in chancery, did cause to be personally present at my office, No. 342 D street, in the city of Washington, in said District, the within-named witnesses to testify on the part and behalf of the defendant in a
540 certain cause now pending in the supreme court of the District of Columbia, wherein Sam'l A. Peugh is complainant and Henry S. Davis defendant.

J. J. JOHNSON,
Ex'm'r in Chancery.

NOVEMBER 11, 1873, *Tuesday.*

Met pursuant to above. Present, counsel on either side; when,

J. J. COOMBS, being duly sworn, says:

My name is Joseph J. Coombs. I am upwards of 50 years of age. I am a practicing lawyer in this District. I have resided principally in the District of Columbia for 23 years. In 1852 and 1853, I think, I purchased a good many vacant lots in various parts of this city, either individually or jointly with other persons. Soon after I came to Washington real estate began to advance rapidly. In 1852 and 1853 I think it was rapidly advancing in price.

541 Q. Can you state between the year 1852 and 1857, when real estate reached its maximum price according to your recollection?

(Objected to by M'r Stanton.)

A. According to my present recollection the prices continued to rise through the years 1854 & 1855 and perhaps up to the revulsion or panic of 1857. I can't fix the date, exactly; but I well recollect that after the panic of 1857 the price of property here as well as in the West, where I then considerable interest in real estate, declined very materially. This especially true of vacant or unimproved property in this District which had advanced in price in a larger proportion, I think, than improved property. In 1854 or 1855, I think it was—I have no records to refer to—there was a re-assessment——

542 (M'r Stanton objects to anything being said about assessments by the witness, as being secondary evidence.)

Witness resuming says:

—— for the purpose of taxation. I then owned or was interested in a good many vacant lots in this city, and during the years 1858, 1859, & 1860 I repeatedly offered all the vacant property I owned in the District at one-half of the assessed price. I made this offer several times publicly, and at one time to one of the assessors who made the assessment. Nobody took me up.

(All this testimony relating to the witness' individual transaction objected to as irrelevant and incompetent.)

Q. As well as you can recollect was there a commercial crisis about the year 1856–'7; and, if so, how did it effect real estate in the District of Columbia?

543 A. There was a very serious commercial crisis in 1857, I think. It was succeeded by a very marked depression in the price of real estate, especially unimproved property, in the District of Columbia. I wish to qualify what I said awhile ago in this respect, as I am not certain that I offered all the vacant property I had in the District at one-half the assessed value in the year 1858, but I know I did in 1859 and 1860.

Q. In what parts of the city had you, as well as you can recollect, unimproved real estate?

A. Principally on the Island, but several lots in the west end, on G and H streets, west of 19th street.

Q. Were you acquainted with the value of real estate east of North Capitol street and north of H street, about the year 1857 and 1858?

544 A. I had no particular acquaintance with the value of property in that locality, but in the years 1852, 1853, and 1854, I was in the habit of attending auctions in all parts of the city, and got a tolerable idea of the value of property in all parts of the city, I have no distinct recollection as to the effect of the convulsion in 1857 upon the price of property in the locality indicated, but believe the depression was general throughout the city.

(Witness' belief, as distinguished from his remembrance, objected to.)

Q. From the knowledge you have please state your judgment what would be the value per square foot, in the year 1857, of a square or squares of unimproved property east of 8th street east and north of H street north.

(Objected to by M'r Stanton because the judgment of the wit-
545 ness cannot be given in testimony upon this point, and also because the witness has not shown himself qualified to testify concerning the value of real estate in that locality and at the period mentioned.)

A. If ever I had sufficient knowledge of the value of property in that locality at that time, I have not sufficient recollection of it to justify me

in giving any opinion as to the value of such property, I never bought or had any interest in that portion of the city.

Cross-examined by M'r Stanton:

Q. In what business were you engaged at the time of the real-estate transaction referred to in your direct testimony?

A. Principally in the practice of my profession.

546 Q. You were not a real-estate agent and could hardly be called a real-estate speculator, at the time indicated?

A. I was not a real-estate agent, and certainly real-estate speculation was not my business.

Q. Your experience concerning the effect of the commercial events of 1857 upon real estate was not limited to the District of Columbia, but extended and related chiefly to Western land?

A. It was not limited to the District of Columbia, but did not relate principally to the West. I think my own personal observation of the effect was greater here in the District of Columbia than anywhere else.

Q. The real-estate interests with which you were one way or another connected were, however, as extensive or as nearly extensive

547 in the West, were they not?

A. More extensive.

Q. Can you say that the *piece* of real estate was as much affected by the events of 1857 in the District of Columbia as outside of it?

A. I do not know that my recollection enables me to answer that question definitely, but I think prices went down here in about the same proportion that they did in other parts of the country.

(Witness's supposition, as distinguished from his remembrance, objected to.)

Q. So far as your own remembrance goes, then, you cannot say that the effect was so great in the District of Columbia?

A. I think I have answered that question as fully as I am capable of doing.

548 2. Your attendance upon auction sales and your own purchases of real estate ceased, did they not, or very much diminished, some two or three years before 1857?

A. It is difficult for me to recollect when I began to slack off. The last auctions that I attended, and the last purchases that I made, I was connected on those purchases with the Hon. Samuel F. Vinton. I will say that was, I think, in 1855. I bid off a number of lots and the titles were defective, and the purchase was not consummated but in respect to one lot.

Q. The exigencies of your own personal and business affairs required or induced the offer of your property for sale, as testified to in your direct testimony?

A. Not at all. The offer I have spoken of I made because I was

549 glad to get rid of the property at those rates, without regard to my own financial situation. If I had been the richest man in the world I would have been willing to have taken those prices.

Q. Were not your affairs somewhat involved at the time indicated?

A. I was embarrassed after the revulsion of 1857.

Q. You knew the late William B. Todd and are acquainted with Moses Kelley?

A. Yes.

Q. Their transactions in real estate have been extensive, and their knowledge respecting it and its prices has been as thorough as that of any of their contemporaries in this city?

(Objected to.)

A. M'r Todd was, at the time spoken of, one of the largest real-
550 estate in the District. I do not know whether M'r Kelley operated in real estate at that time or not. I know he has since. I should suppose that they were men whose judgment in regard to the value of real estate is entitled to great respect from the extent in which they have operated.

Cross-examination here closed.

Adjourned till the 14th inst. at 3 p. m.

J. J. JOHNSON, *Exam'r.*

Met pursuant to above. Present M'r Norris for M'r Davis.

At the request of M'r Stanton, per note herewith filed, adjourned till to-morrow at 5 o'clock p. m.

J. J. JOHNSON, *Exam'r.*
J. J. COOMBS.

Sworn and subscribed to before me this 3d day of April, 1874.

J. J. JOHNSON, *Exam'r.*

Note.

"DEAR SIR: I cannot attend in Peugh v. Davis to-day, but will do so at 3 p. m. to-morrow.

"Yours,

"E. L. STANTON."

551 JOSEPH H. HILTON, being sworn, says:

My name is Joseph H. Hilton; I am 51 years; I reside 922 8th street, between I and K streets; by occupation I am collector and constable; at this time I am employed at the National Theatre.

Q. Were you residing in this city in October, 1865, and were you acquainted with Henry S. Davis and George Henry Simms?

A. Yes.

Q. Do you know anything of a contract between said Simms and M'r Davis in relation to a renting of square 911 in this city, and were you witness to said contract?

A. I was.

Q. Look at Exhibit G. S. 1, and state whether that is the contract, and whether that is your signature as a witness.

A. Yes, sir; that is my name and my signature.

552 Q. State, as well as you can recollect, when and under what circumstances that paper was executed and witnessed by you.

A. Must I go right along and state all the circumstances?

Q. Yes; that is a sweeping question.

A. That paper was written and executed all the same day that the paper shows, the 11th of October, 1865. The agreement was made between M'r Simms and M'r Davis in M'r Charles Winder's bed-room, and the paper was written in M'r Winder's office, same building, but different rooms; but M'r Simms requested M'r Davis, as he was very busy and hadn't time then to wait, to have the paper prepared and brought to his house, as he would not be able to attend to it until night, as he was not home until , and then he would pay M'r Davis the
553 rent and execute his contract or agreement. That evening about candle-light, I reckon about dusk, a little after dark, M'r Winder called at my house in company with M'r Davis to accompany them out

to this man, Simms' house. I went there, M'r Winder, myself and Davis. M'r Winder read the instrument to him. He [illegible] pleased and gratified to find out the owner of the property, and was very glad to get rid of M'r Peugh, as he had treated him very badly. M'r Davis authorized M'r Winder to collect the rents and receive [illegible] them in his Davis' name. That is all I know about it, except M'r Simms signing the instrument and I witnessing it.

Q. How many times were you at Simms' house?

A. I never was there in my life before nor since.

554 Q. At whose instance and request were you there at that time?

A. By request of M'r Winder in presence of M'r Davis. They came to my house.

Q. Did you see Simms before you went to his house; and, if so, did he make the arrangements to meet at his house?

(Objected to as leading.)

A. I thought that I covered that *that* in the fore part of my statement. In room No. 11 in the Intelligencer building, occupied by Mr. Charles H. Winder at that time as sleeping-chamber, the conversation and the agreement between M'r Simms and M'r Davis and M'r Winder was talked over in that room in my presence. He, Simms, requested Davis to come to his house that night; he would execute the paper to become his tenant and pay the rent.

555 Q. When you were at Simms' house was anything said, or not, about a loan of $2,000 by M'r Davis to M'r Peugh?

A. I never heard it.

Q. What was M'r Davis' manner at the time you were there?

A. I never saw anything in his manner very pleasant; talked some little to Simms. M'r Winder done pretty much all the talking.

Q. State whether you was in a position to hear all the conversation that passed between M'r Davis and M'r Simms on that occasion.

A. I was, sir; it was a small room and we all in one room.

Q. If anything was said about a $2,000 loan from M'r Davis to M'r Peugh, state what it was.

(Objected to as both leading and argumentative.)

A. I never heard there or anywhere else anything about a conversation of a loan of $2,000.

556 Cross-examined by Mr. Stanton:

Q. Are you a constable at the present time?

A. Yes, sir.

Q. What is your occupation at the National Theatre?

A. Watchman.

Q. Have you had any conversation with M'r Davis in respect to the subject-matter of your testimony in this case?

A. All that I have had to say to him about it was in relation to the date; that he said the paper would furnish me with the date; all the circumstances surrounding that was fresh in my memory.

Q. Am I to understand that what you stated in your answer first given is all that ever passed between yourself and M'r Davis

557 concerning your testimony in this case?

A. To the best of my recollection, that is all.

Q. And is it all that has passed in conversation between yourself and any one in respect to the transactions concerning which you were to testify?

A. I have no recollection of talking to any one on the subject.

Q. From October, 1865, until your examination to-day, you never narrated these circumstances to any one?

A. Not to my recollection, sir.

Q. When, and by whom, was it first intimated to you that your presence as a witness in this case, in M'r Davis' behalf, would be needed?

A. Well, I don't know exactly when; I suppose it has been some weeks.

Q. Has it been a year?

558 A. It has been some weeks since M'r Davis told me to come here to prove *my* signature to a paper between him and Simms. That is about all he said to me at that time in relation to the matter.

Q. Then am I to understand that the only intimation that you ever had as to the nature of evidence desired of you in this case was that you were desired to prove your signature to a contract between Simms and Davis?

(Objected to for two reasons: 1st, because the witness has not testified that that was the only reason and 2nd, because it is known to the counsel on both sides that M'r Hilton was examined in this cause.)

A. Yes, sir; and whatever evidence surrounding the case that I recollect of.

559 Q. Then, contrary to *my* answers to my former inquiries, you did have conversations with Davis concerning your testimony in this case beyond the mere question by you as to the date of the contract?

(Objected to, because no such testimony has been given.)

A. Just covering the ground of the question to my last answer, so far as I recollect.

Q. That was in addition to the matter to which, in your former answers to my inquiries, you limited the conversations between Davis and yourself?

A. No addition, to my understanding or recollection.

Q. Do you mean by your last answer that there was mentioned in conversation between Davis and yourself concerning your evidence in this case, nothing beyond what you have stated when I first interrogated you on the subject?

560 A. I mean to say that M'r Davis said he wanted me here as a witness to prove my signature to that contract or paper between him and Simms, and to state whatever I recollect of what transpired then and there.

Question repeated.

A. The same answer I just gave, I give to that.

Q. And do you refuse to give any other answer?

A. M'r Johnson, what other answer can I give but the truth, to the best of my recollection. I want to state right here that neither Henry S. Davis nor all the Peughs ever had money enough, or will ever have money enough, together with all the lawyers upon both sides of the case, to cause me to send my soul to hell for filthy lucre.

561 (M'r Stanton says, the pious sentence expressed by the witness in the latter part of the answer objected to as being not responsive, and as "protesting too much.")

Q. When I first interrogated you concerning the intercourse between Davis and yourself respecting your evidence in this case, didn't you testify that the inquiry by you concerning the date, and reply by him that the paper would furnish it, were all that ever passed between yourself and Davis concerning your testimony in this case?

A. I don't know whether I did or *or* not, but as I have been going along in this examination and cross-examination, M'r Quarles has refreshed my memory of some of the testimony I may have omitted in my testimony-in-chief.

Q. Do you remember whether or not when I first interrogated you concerning the intercourse between Davis and yourself, you
562 answered that inquiry by you concerning the date and reply by him that the paper would furnish it, were all that ever passed between Davis and yourself concerning your testimony in this case?

A. I have no recollection of any more.

Q. And you were never inquired of by M'r Davis or any one else prior to this examination as to the extent of your remembrance of the interviews at which you say you were present?

A. Not to my recollection, further than I have already stated?

Q. Have you already stated that any such inquiry was made of you prior to this examination?

A. All that is set forth in them papers you (meaning the examiner) have been writing, are correct, to the best of my knowledge and belief, so far as I can recollect.

Q. Will you have the kindness to tell me whether at any time
563 before you appeared as a witness here to-day, M'r Davis or any one else asked you to what extent you remembered the circumstances concerning which testified in your examination-in-chief?

A. If I recollected, I have already stated that two or three times, I think, in connection with the paper. M'r Davis did not ask me, but said to me, "You remember all the circumstances." I told him I remembered it except the date of the paper. I said to M'r Davis I did not know the date of the paper which was executed.

Q. Was anything else besides what you have stated in your last answer, ever said in conversation between you and Davis or any one else, concerning these transactions?

A. If there was I have no recollection.

Q. And I understood you to say that the subject of those
564 transactions were first mentioned to you by Davis several days ago. Am I right?

(Objected to because no testimony has been given that those transactions were mentioned to him a few weeks ago.)

A. So far as my evidence in the case is concerned, you are right.

Q. Did M'r Davis ever say anything to you concerning the transactions testified to by you in your direct examination at any time earlier than a few weeks ago?

A. I don't recollect beyond that time; I don't think it was longer than five or six weeks ago.

Q. Did anybody else say anything to you about the transactions testified to by you in your direct examination at any time earlier than few weeks ago?

A. I don't think I ever heard anybody say anything to me
565 about it, except M'r Davis, and that only within the last five or six weeks.

Q. You were never told what had been testified to by Simms or his wife, or any one else concerning those transactions included *included* in your testimony-in-chief?

A. I do most emphatically and positively declare that I never have been told in the case.

Q. And you were never asked to state what facts you yourself remembered up to the time you appeared as a witness here to-day?

A. The day that M'r Davis met me I had not seen him for a long, long time. He said, "Hilton, I have been inquiring for you; where do you live? I want to know, for I may want you to prove your signature to that paper executed between myself and Simms; you recol-
566 lect all the circumstances about it, don't you?" I said, "Yes, sir, perfectly." We were then standing in the middle of the railroad track in 7th street, right opposite the Post-Office, and that is about all I recollect of that interview, except he said, "When I want you I will send for you;" that was the last word he said to me. Then about three weeks after that interview he said to me, "I want you to come up to M'r Johnson's office about three o'clock;" and that is all.

Q. Now, just here, in order to approximate the time of these interviews with Davis, I will ask you whether, when you first came to M'r Johnson's office, M'r Coombs was being examined in the case?

A. The day I came I hear M'r Coombs was sitting here testifying; whether he had been here any other day or not I don't know.

567 Q. Do you mean to say absolutely and unqualifiedly that at this interview in Simms' house, which occurred eight years ago, and the time of which you did not remember when you were recently reminded of it, nothing was said about a $2,000 loan, or do you mean to say that you remember no such thing?

A. I mean to say emphatically, before M'r Winder, M'r Davis, and myself it never was said, nor could not have been said without my hearing it in that room.

Q. Do you mean to say, going further than you have now gone, that though this interview occurred eight years ago, and though when recently reminded of it you could not remember the time, yet some allusion could not have been there made to a $2,000 loan, and that allusion escaped from your memory during the eight years which have since intervened, in which time the facts have not been narrated by you to any one, nor mentioned by any one to you?

568 A. In first place in relation to the dates, I am not at a loss for the year or month, but particular day of the month I wished to have my memory refreshed about. So far as the allusion made in that house of Simms in relation to a loan of $2,000, if said at all it must have been in a whisper and so low that it would have been impossible for me to hear it. The paper was read to Simms, executed, and money paid, and receipt given by M'r Winder for M'r Davis, and no other conversation took place then and there, to my recollection, except that which I have heretofore stated. The time we were there was so short—as soon as the business was completed we left.

Q. You say now that no other conversation occurred in your hearing, to your recollection, beyond what you have stated. Now, do you swear that in that conversation there could have been stated nothing else, and no other allusion made and you have failed to remember the same?

(Objected to because no conversation took place in that room where these parties were congregated in relation to a loan of $2,000, but he has not said that no other conversation took place & that no allusion was made to any other matter.)

569 A. If the loan of $2,000 had been spoken of, I could not help hearing it, for my ears were as keen then to hear as they are to-night, and if there had been I should not have failed to remember it. I think if there had been I should recollected it. We went there for a special purpose.

Q. Will you swear that it is an impossibility for you to have forgotten in eight years anything that was said in that interview in Simms' house,

or any allusion then & there made to anything outside of what you say you remember?

(Objected to as an absurd and frivillous question.)

A. If I can understand and comprehend that question in all its ramifications and complications, I will try to answer it.

(Counsel request the witness to indicate anything in the question which he fails to understand.)

570 The question is again read over to the witness, and the witness says: The witness requests that the question be read again.

A. I say this: As to it being an impossibility I don't swear, for Almighty God might have taken away all my memory & intellect, & in that case it would have been an impossibility for me to have recollected it, but as he has blessed me all along with good memory & no insanity, I recollect that nothing was said in my hearing there of $2,000.

Q. Your mental faculties are as vigorous and comprehensive, as clear now as they were then, are they, or are they not?

A. Yes, sir; I am the same now as I was then.

Q. Will you have the kindness to tell how you remembered,

571 after the lapse of eight years, that this interview occurred in October, 1865?

A. From the fact that my eyes were very bad that fall, and that in the Intelligencer building, with M'r Winder, I did more office work than outdoor work, and also from the fact that D'r Stone was attending my eyes the same year and same month, and the succeeding month.

Q. How did these facts enable you to fix with certainty and precission the month as being October?

A. Well, I had told M'r Davis that I thought it was the middle or latter part of October or the 1st of November.

Q. Counsel for the defendant, who has been very emphatic in his statements when entering objections during your cross-examination, stated in one of these objections that you had been, on a former occasion, examined; were you so examined?

572 A. I never was.

(Counsel for defendant says he does not think it courteous to say that he is emphatic in his objections; that he is merely discharging what he deems to be his duty to his client in entering objections to questions he thought improper, & that before the question was put to the witness as to whether he had testified before in this case, he was satisfied that he was mistaken, & that it was another case in which he had testified.

Counsel for plaintiff, disclaiming intention of being discourteous to his learned brother, constrained to say that he considered many of the objections made by his learned brother not very courteous.)

Q. How often have you appeared as a witness in M'r Davis' behalf in different cases?

(Objected to.)

573 A. Well, never but two, Coyle's and this one.

JOSEPH H. HILTON.

Subscribed and sworn to before me this 4th day of December, 1873.

J. J. JOHNSON, *Exam'r.*

Adjourned till Monday next at 3 p. m.

J. J. JOHNSON, *Exam'r.*

Met pursuant to above. Present, counsel on either side; when

WILLIAM H. PARKER, being sworn, says:

I reside in the 1st ward. I have been in Washington for a good many years, about fifty years.

Q. Were you residing here and doing business from the years 1854 till 1860, say; &, if so, what business were you engaged in?

A. I was, & I was engaged in the carpenter business, building.

Q. From 1854 to 1860, during that period, were you engaged in real estate in any way?

574 A. I bought lots and built houses on them.

Q. Well, sir, during that period do you know of any change in the price of land as to depression or increase in this city?

A. Yes, sir; great depression during the year 1857, and of course it extended to 1860 & 1861, and of course it extended into the time of the war; after that it was wild, perfectly wild.

Q. M'r Parker, what was the immediate cause of that depression, as well as you recollect?

A. Well, it was a financial crisis is all that I can attribute it to; a breaking down all over the country.

Q. Do you know what year that occurred? The financial crisis, I am speaking of.

A. About 1857.

Q. Can you state whether that affected the price of real estate in the city of Washington; &, if so, how it affected it?

575 A. Well, there was no sale for property. It affected the sale very gravely indeed, very materially, because there was no sale for property, unless, of course, at very reduced prices.

Cross-examined by M'r Stanton:

Q. How extensive were your operations in real estate at the time you have indicated in your examination-in-chief?

A. Well, sir, I should say from twenty-five to thirty thousand dollars.

Q. Do you mean that you yourself invested from $20,000 to 30,000 in land in Washington City within the period indicated?

A. I mean houses and ground. Probably it went beyond that.

Q. How much did you invest in ground within the period indicated?

A. Well, say to within $10,000 to $15,000, I should say.

576 Q. That is, within the years 1854 to 1861?

A. Yes, sir. It would have exceeded that sum, taking that range.

Q. How much did you invest in ground from 1854 to 1861, & in what quarter of the city? I do not mean the exact amount, but desire you to make an approximate estimate in the same manner in which you did in answer to my former inquiries.

A. Well, I should say from $10,000 to $20,000, and the different portions of the city were, the 1st ward, the 2nd ward, & I reckon the 4th ward, from 7th to 9th streets west.

Q. How much did you invest in ground in the city of Washington in the year 1857?

A. I think nothing, sir. It was too dull for that.

Q. How much did you sell in the year 1857?

577 A. Well, I sold about $17,000 to $18,000. I could not say that it was exactly in 1857, but I think it was.

Q. Your transfers will be indicated in your own name in the record office?

A. I presume so, sir.

Q. In this amount, at which you estimate your transactions in the year 1857, do you include the value of the houses as well as the value of the ground?

A. Yes, sir.

Q. Did you sell in that year any unimproved ground; &, if so, to what extent?

A. I am not able to say that there was any unimproved ground sold that year. There was a transaction between myself and Mr Biggs in which property had to be sold.

Q. Were you individually in financial embarrassment in the year 1857?

A. Yes, sir; I could not pay.

578 Q. And your sales resulted in a large part, if not entirely, from your inability to pay; in other words, from your insolvency?

A. Well, I did not claim to be insolvent, because I determined to fight the thing through, & I have been fighting the thing ever since. My sales did result from that.

Q. Since that embarrassment befell you you have not been largely engaged as a purchaser of real estate, have you?

A. No, sir.

Q. Did that insolvency or embarrassment result from your building operations or from depreciation in the value of ground itself?

A. Both.

Q. Which do you mean to indicate as the main cause, or were they equal in their operation?

579 A. Well, there was no sale of ground & no sale of houses and ground of any account by me.

Q. I ask you again, was the main cause of your insolvency or embarrassment the result of your building operations or of depreciation, not merely of the absence of a ready sale for it, but of an actual depreciation in the value of the ground?

A. I should think it was a depreciation.

Q. I understand you, then, to say that your insolvency or embarrassment principally resulted from the actual depreciation in the value of the ground which you had bought?

A. I think so.

Q. Now what was the cost to you of the ground alone which you owned when the crisis of 1857 occurred?

580 A. Well, I should think it would probably approach $10,000.

Q. To what extent was the ground alone depreciated?

A. Well, it would be very hard to say about that, but I should think it was fifty to one hundred per cent. There was no sale really.

Q. Then, if it was depreciated one hundred per cent., it was worth nothing.

A. It was not so bad as that.

Q. Then it was not depreciated from fifty to one hundred per cent.?

A. That matter we may not understand alike. I don't know about that. You see my operations were based more upon building houses upon lots, & they would not sell for more than fifty to one hundred per cent., as I understand per cent., upon their cost.

581 Q. Please explain your ideas of percentage, and especially what you mean when you speak of the depreciation in the value of the property from fifty to one hundred per cent. upon its cost.

A. Well, I mean this, that a couple of houses I built that ought to have brought me $11,000 did not bring me but $6,000. That will range

from fifty to one hundred per cent., won't it? If it ought $12,000, and it only brought $6,000, there is a deduction of one hundred per cent., is not it?

Q. You mention that, then, as an extreme illustration of the depreciation of property, or do you mean to say that this was the average of depreciation?

A. Well, it was my average. I don't know what other people's were.

Q. Then your average was what you call one hundred per cent., was it?

582 A. From fifty to one hundred per cent. Now just let me say right here that the hard earnings of a life-time to me were broken up by that crisis, and I claim to be a very careful man, too; hard-working and economical.

Q. Am I to understand, from your testimony in chief, that you affirm that ground unimproved, in Washington, could be purchased in 1857, 1858, 1859, and 1860 for less than it could have been purchased in 1854, 1855, and 1856?

A. That is my experience.

Q. Do you mean to say that that was the case, generally, throughout the city of Washington?

A. That I don't know, but I should think so.

Q. As to the general condition of the market, outside of your own personal experience, would you consider yourself more competent to express an opinion than the late William B. Todd or Moses Kelly?

A. No, sir; I would not.

583 Q. You would consider them just as truthful and better qualified than yourself?

A. Not better, I should say.

Q. Then you would consider yourself qualified equally with them, would you? and I refer especially to unimproved ground.

A. About qualification, I could not say much about; according to my own judgment, I think I am as good as they are. They had good deal more money than I had.

Q. Their transactions were much more extensive than yours?

A. Oh, yes, sir. That is, M'r Todd's were; I don't know anything about M'r Kelly's. I never knew of him in those days.

Q. Do you know whether the average value of unimproved ground in Washington was in 1858 one-half of what it was in 1855?

A. I do not know.

584 Q. You would hesitate to express an opinion as to the comparative average values of unimproved ground in those two years?

A. Well, my experience was more in houses and ground than it was in unimproved ground. Now, let me say, if I built a house on ground I could not get from fifty to one hundred per cent. of the cost of the ground and the house, that is what I mean to say. I mean in the crisis of 1857, and from that up to 1860; I have had ample experience in that.

Q. Even then, in respect to improved property, do you say that in 1858 that property throughout Washington could, on the average, be purchased for one-half what it cost in 1855?

A. My experience, as I said before, was based upon improved property, and that there was a depreciation of 50 to 100 per cent. I go back there again. I know nothing about people outside. I attended to my own business.

585 Q. Then even as to improved property, you testify only to your own experience, and don't assume to testify concerning the aver-

age depreciation all over the city, as illustrated in the experience of other people?

A. I know nothing of other people, only my impression is it was general. I know nothing about that personally.

(Mere impression objected to.)

Q. And as to unimproved property, you say your experience was exceedingly limited?

A. I did not say so.

Q. What do you say now; was it limited or was it extended?

A. Medium, I said.

Q. Was it medium in 1857 and subsequently?

A. Yes, sir.

586 Q. Was not nearly all your property in 1857, in Washington, improved property, and was not your experience confined to that, pretty nearly?

A. Yes, sir.

Q. You had no special information concerning property in the neighborhood of H street north and 8th and 9th streets east?

A. None.

Q. You would not undertake to say of your own knowledge that in 1858 unimproved property out there was worth only one-half of what it was worth in 1854 and 1855?

A. I would not know of my own knowledge; but should think that the depreciation out there was equal, if not beyond, what it was in other parts of the city.

(Impressions of the witness objected to.)

Q. Now, as I asked you about your personal knowledge, of which you said you had none, and you volunteered your supposition, I will ask you upon what that supposition is based?

587 A. Well, that supposition is based upon this, that good property would bring a very low price, both improved and unimproved, and that outside property would, of course, be less valuable or less saleable.

Q. Do you know anything about the opening of H street in 1856 or 1857?

A. No, sir; I do not.

Q. In other parts and throughout the city generally, will you undertake to say of your own knowledge, and I ask you to confine yourself to your own knowledge, that unimproved property throughout the city was on the average worth in 1858 only one-half of what it was in 1855?

A. According to my own experience, I say I don't know about it; but my impression is that there was a depreciation of 50 to 100 per cent.; that brings us back to where we started. I don't know. I attended to my own business.

588 Q. Have you ever had any personal or business relations with either the plaintiff or defendant in this suit?

A. I have never had any business relations with M'r Davis nor M'r Peugh.

Q. Where were these two houses which I understand you to say cost $11,000, and which you say you sold for $6,000?

A. I never said they cost me $11,000. The houses were on G street, between 21st and 22nd street.

Q. How much did they cost you?

A. Well, could not say what they cost; but they ought to have sold for $11,000, and only sold for $6,000.

Q. Can you estimate their cost?

A. Well, as near as I could come at it, an approximate estimate would be, say, $8,000 or $9,000, and ought to have brought $11,000.

Q. What unimproved property did you in 1857 or 1858 *did you* sell for one-half what it cost you before 1857?

589 (Objected to, because there is nothing in the testimony showing that the witness has said he sold any for one-half what it cost him.)

A. None that I know of.

Q. Did you sell any improved property, if so, what, in 1857 or 1858, for one-half of what it cost you before 1857?

(Objected to, for the reason above stated.)

A. I would not hardly know how to answer that question. It was the embarrassment of 1857 that produced these sales.

Question repeated.

(Objected to.)

A. I think not.

Redirect:

Q. You state that the financial crisis of 1857 effected the value of real estate in the city of Washington with which you were concerned; was its effects confined entirely to the property that you were concerned

590 with, or did it effect other real estate in the same manner?

A. I think it was general.

Q. When you speak of the crisis affecting you so as to cause a loss of a lifetime's labor, do you mean to say that was in the purchase and sale of real estate by you, or were its effects to prostrate business generally?

A. General prostration; general depreciation.

Q. You have been asked whether William B. Todd was not more competent to give an opinion as to the value of real estate at that time than yourself, on account of his being largely engaged in real estate operations. If you know, please state to what kind of property his operations were principally confined?

A. His operations were much larger than mine, and were confined principally to unimproved property.

591 Q. State, if you know, what kind of titles he dealt in?

(Objected to as irrelevant.)

A. I do not know.

Q. Do you know whether M'r Todd was a large operator in tax-titles?

(Objected to as irrelevant as well as leading.)

A. I do not know.

Q. You state that you were concerned in property in different portions of the city; was it all effected by the commercial crisis spoken of?

A. All mine was.

W. H. PARKER.

Sworn and subscribed to before me this 8th of December, 1873.

J. J. JOHNSON,
Exam. in Chancery.

Adjourned to the 15th inst., at 3 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

592 Met pursuant to above; present, counsel on either side. When GEORGE E. KIRK, being sworn, says:

My name is George E. Kirk; I am 52 years of age about, more or less; I reside 920 E street, in this city.

Q. Were you residing in Washington City during the of time from 1854 to 1860? and, if so, state whether during that time you were concerned in the purchase or sale of real estate.

A. I did reside here at that time, and have always been buying or selling property in a small way, comparatively, to what many persons are doing it here, sufficiently to be generally pretty well posted about property throughout the city.

Q. State whether there was any change, if you can, in the marketable value of real estate during the period mentioned, and, if so, whether the change was in enhancement or declension of its price.

593 A. From 1852 to 1857 there was considerable decline in vacant property here, and property generally. I tried to sell a good deal of property during 1856 & 1857, the panic, and I could do nothing with it at all.

Q. If you know of any cause for this declension in the price of real estate, state what it was.

A. I know of no cause for it except that so much property was thrown on the market, and the suspension of 1856 & 1857, the *security* of money.

Q. In your answer to the previous question, you speak of a panic, and in your answer to the last, of a suspension. State what you mean by the panic, and also what you mean by suspension.

A. I mean by suspension that the bank' suspended in redeeming
594 their notes, and a general depreciation of the currency. I suppose M'r Norris knows what I meant by panic. I mean by the panic that there was a general suspension about that time, as above answered.

Q. Can you state from your personal knowledge and observation that the suspension of the banks at that time had an effect upon the sale and price generally in the District of real estate; and, if so, was that effect favorable or unfavorable?

A. It had an unfavorable effect.

Q. Can you form any idea from your recollection as to what per cent. unimproved property lying *lying* out was affected by this commercial panic?

A. I could not exactly state the amount the percentage would be, but I know it was very considerable.

595 Q. If unimproved squares of ground lying distant from improvements sold for two and a half cents per foot in 1854, can you form an estimate of what they would have brought in the market in 1857 and 1858? and, if *if* so, state to the best of your ability.

(Objected to because the witness already has said that he cannot state the amount of reduction in the value of property caused by the financial events of 1857. If, therefore, he should now make the estimate called for in the present question, he would express an opinion concerning a matter which he has averred himself incompetent to estimate, or else he would contradict his former answer and assume now qualifications which a moment ago he disavowed.)

596 Q. I never bought any squares of ground during that time, and I can't say what the difference in price would be. My information is general, having bought considerable property, and sold some, as first stated.

(Question repeated. Same objection as above.)

A. Well, I should judge from property generally that it would have been a difference of one-third, and in many instances probably more fully that.

Q. Do you mean one-third less or one-third more?

A. One-third less.

Cross-examined by M'r Stanton:

Q. What is your business?

A. House-painter.

Q. Was it also your business during the period you have indicated, from 1854 to 1858?

597 A. Yes, sir. I was in the painting business and had a machine-shop, and was building houses during two years of the time.

Q. Between the years 1852 and 1858, can you state, by approximation, the amount of money annually invested by you in land in the District of Columbia?

A. As I stated before, I was not a large speculator. I was buying and selling during the time specified from $10,000 to $15,000, in buying and selling property—that is, ground. I am speaking of ground alone now. The most of the property that I owned was then in the 7th ward, and bought at comparatively low prices.

Q. When was it purchased?

A. Along between the years 1849 and 1850—somewhere along there up to 1860.

Q. Was this sum, from $10,000 to $15,000, invested in ground alone, or partially in improvements upon real estate?

598 A. Mostly in ground.

Q. Did you purchase any unimproved ground in the year 1854? If so, state where, and to what extent, and the price paid for it.

A. I can't remember distinctly of but one piece of property in 1854, and that was on South F street, between 3d and 4½ streets. I bought a lot from D'r Hall, and the amount that was paid per foot I can't exactly remember. I think the lot was about 25 feet front by one hundred. I can't say exactly what it cost, but don't think it exceeded $120, and I am under the impression it was not as much as that. It has been so long ago, I am only speaking from memory. I bought the lot and built a house and sold it. I sold the house while it was being built. I

599 sold it the same year I bought the lot. I may have bought other property the same year, but there is nothing to bring it to my memory, there has been such a lapse of time.

Q. Do you remember the purchase of any property in this city in the year 1854 by any other person than yourself? If so, state the situation of the property, its quantity, price, and purchaser.

A. I can't answer it, sir. It has been too long. No doubt there was great many sales and purchases of property at that time, but there is nothing to bring *to bring* it to my mind; the lapse of time is too long.

Q. Can you give the information with reference to 1853 or 1855?

A. No, sir.

Q. Then you cannot mention here any property which you know

600 to have been purchased in 1854 and sold in 1857 or 1858?

A. I can't particularize any, unless something was brought to my memory about it, excepting the property built by John R. McLeod and William H. Parker. I painted all four houses after they were built and sold. I believe two of them were sold at public auction, and the other two, I think, at private sale—bought by M'r Libby, of Georgetown, and M'r William B. Todd. McLeod & Parker purchased the ground, I don't know when, but built the houses between 1854 and 1858, and sold to Libby and Todd very shortly after they were built. They were sold between the years 1854 and 1858. I can't state more definitely without reference to my books. That is the only transaction of

purchase and sale between these years that I can remember. They were sold to those parties either at private or public sale, I
601 don't know which, and they did not realize money enough to pay the debts. I lost the whole of my bill on McLeod's houses. The other man paid me a portion on his houses afterwards. I did not get it out of the sale of the property.

M'r Davis says: M'r Kirk, I think you had better have the question read over to you. I understood you to say that both Libby & Todd bought the houses.

WITNESS. I can state M'r Todd bought M'r John R. McLeod's two houses, and M'r Libby bought M'r Parker's two houses.

Q. You speak of these two houses not bringing enough to pay for them; do you mean to say that proceeds of the sale were less than the cost of the buildings, and that the proceeds were used only for paying
602 a portion of such cost, and for no purpose or debt outside of such cost?

A. I have no personal knowledge except what the parties told me themselves. John R. McLeod died about the time, and his estate was wound up. I went to see M'r Todd about my claim against the property he bought. I got it into my head, either from McLeod or that M'r Todd sold him, McLeod, the ground, and had the first lien upon it, and was told by him that it did not sell for enough to pay the debts against it. I got nothing. My impression is, brick-men and lumber-men filed liens against the property.

Q. You don't know what the property cost, nor what it sold for, do you?

A. I did know at the time what it sold for, but I now dis-
603 member; but do know that it did not sell for one-half of what I considered it worth. I speak now of John R. McLeod's property, especially that M'r William B. Todd bought. It was sold in 1856 or 1857. I disremember the year, but impression is it was the latter part of 1856, or the early part of 1857; during the suspension.

Q. The Parker property, so far as you know, sold for about as near to its real as the McLeod property?

A. I think the McLeod property was a greater sacrifice than the Parker property, from what I hea'd of it. I think the McLeod property was sold at public auction; the Parker property, I think, was not.

Q. Both McLeod and Parker were involved at the time of these sales in financial embarrassment?

A. I don't know that to be so, except what M'r Parker said
604 here the other day in his examination. McLeod died, and, of course, his estate was wound up.

Q. You don't know all of the debts to which the McLeod property and its proceeds were subjected?

(Objected to as irrelevant.)

A. I do not. I made no investigation in the matter after I was told by M'r Todd that I would get nothing.

Q. Nor do you know to what extent these proceeds were applied to debts or liens outside of the cost of the property?

A. Nothing but what M'r Todd told me; that the incumbrances on the property was more than it sold for.

(M'r Norris here states that he does not wish to go on with the witness any further this evening, as he wishes to examine M'r Kirk as to his books, referring to the particular matter testified to by him, by a cross-examination.

605 M'r Stanton objects to the postponement of the re-examination

of the witness, and especially to its postponement on the grounds just assigned by the complainant's counsel.)

Adjourned till Wednesday next, at 3 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above.

Present, counsel on either side, when M'r Norris proceeded as follows:

Q. You state in your answer to the question of M'r Stanton, "Then you cannot mention any property which you know to have been purchased in 1854 and sold in 1857 and 1858." In your answer you say that M'r Libby and M'r Todd bought the McLeod and Parker houses, and you say, "I cannot state more definitely when it was sold be-
606 tween the years 1854 and 1858, without reference to my books." Have you referred to your books? and, if so, state.

A. I find the last charge on my book against John R. McLeod for the same property was charged September 11th, 1857, after the death of John R. McLeod. Therefore, I believe that the houses must have been sold in the latter part of 1857, or in the winter of 1858; there is no doubt about that. Parker's houses were completed April 10th, 1857; also sold somewhere about the same time the others were sold.

Q. While you state in your answer in a previous question that you were not a speculator in real-estate, can you, from your recollection and knowledge at the time of the commercial crisis spoken of, whether real estate in the city of Washington declined in price from 1855 to 1858?

607 (Objected to, 1st, because it is leading; and 2nd, because it is not proper in the redirect examination of the witness; and 3d, because it seems to be the design to change something which the witness testified to in his direct examination.)

A. Property here to the best of my recollection began to be very flat here in 1854; difficult to effect any sales for anything like its value, and when it was sold it was sold at a depreciation.

(Question repeated. Objection renewed.)

A. Yes, sir; I was trying to sell property myself, and could not get anything to justify myself in selling it. I could not sell it at all.

Q. Suppose in 1854 three hundred and eighty-one thousand five hundred and thirty feet of ground was purchased for $350 and less
608 than two-fifths of the same was sold in 1858 for $2,000. Would you consider the price paid a reasonable value?

(Question objected to by M'r Stanton, and the examiner directed to refer this question to the court before the answer is given.

M'r Norris says he desires the examiner to enter upon the record that the witness is willing to answer the question.

M'r Stanton desires the examiner to note that while M'r Norris assumes to speak for the witness, the latter has, as yet, while on the stand, at least, in no way indicated that willingness, except by silence.

M'r Norris states that the witness did not indicate an unwillingness to answer, and he now asks him if he is willing to answer the question.)

609 Witness says: I can see no objection to my answering it.

(M'r Norris says he is closed with M'r Kirk, except this question.)

Adjourned till Monday next at 3 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met. Present, counsel on either side, and adjourned till Saturday next, at 3 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above.
Present, counsel on either side, and at request of counsel for defendant adjourned till Monday the 5th of Jan'y, 1874.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above.
Present, M'r Stanton, for complainant. No one present for de-
610 fendant. Adjourned till the 7th inst.

J. J. JOHNSON,
Exam'r in Chancery.

The question heretofore objected to, the question being withdrawn.

G. E. KIRK.

Sworn and subscribed to before me this 1st of April, 1874.

J. J. JOHNSON,
Exam'r in Chancery.

SATURDAY, *Feb'y* 14, 1874.

Met pursuant to agreement of counsel.
Present, counsel on either side, when J. CARROLL BRENT being sworn, says:

I am now in my 60th year. My profession is the law. I have resided in the District of Columbia off and on since my birth; taking out a half dozen years when I was abroad.

611 Q. Are you acquainted with M'r Buckner Bayliss; if so, how long have you known him?

A. I am acquainted with M'r Buckner Bayliss, and have known him for the last 20 or 25 years I suppose.

Q. Do you recollect having any transactions with him as the attorney of Young's heirs, in relation to squares 910 and 911 in this city? If so, please state when and what those transactions were.

(Objected to as irrelevant and as relating to a transaction with a third party.)

A. I could not specify from memory alone after the lapse of some 20 years as to any particular transaction of that character; but as grantee of the outstanding title of the Young heirs I find, by reference to my office book of the 21st of March, 1854, that I delivered
612 a quitclaim deed to certain lots mentioned in that memorandum to Buckner Bayliss for the consideration of $350. I have got the memorandum.

Q. Was that entry made that you speak of at the time of the transaction?

A. It was. As it was my habit to enter at the time of transacting business in my office, the substance of what I did or received.

Q. State, if you please, from reference to your memorandum, whether these squares 910 and 911 were included, and whether other property belonging to Young's heirs were included.

A. I find by reference to the memorandum that all of square' 910 and

911 was included in this conveyance. There was other property
613 included in that conveyance.

Q. State, if you please, what other property; enumerate it.

A. I find by reference to the memorandum that lots 5, 6, 7, 8, 9, 10, & 11, in square 856; lots 6, 11, 20, 21, square 673; and lots 8 & 17, in square 617; all square north of 1053; lots 7, 8, 9, 10, & 11, square 959, and north of square 747.

Q. You state that the memorandum which you have before you is from the original entries made at the time in your books. Can you state whether the amount of $350 was the consideration received by the Young heirs through you in the quitclaim deed?

A. From the fact that my having made the entry at the time, I feel satisfied that the amount of consideration was $350, and received.

Cross-examined:

614 Q. Have you before you the original entry referred to in your examination-in-chief?

A. I have not. I have got a copy.

Q. Independently of the entry to which you refer, do you remember those details of the transaction which are stated in your examination-in-chief?

A. I do not.

(Counsel for the complainant requests the examiner to enter his objection to the whole of this testimony, and without waiving his cross-examination, counsel for complainant continues his cross-examination as follows:)

Q. Do you remember how many of the Young heirs there were at the time of this transaction, their relationship to each other, and their places of residence?

A. I do not remember how many, they being so numerous and
615 living in distant and scattered places; their relationship being different. They represented different generations.

Q. Can you state that $350 constituted the whole consideration, pecuniary or otherwise, paid or rendered by M'r Bayliss for the numerous pieces of property above specified?

A. I can state that upon the entry referred to. I do not wish to speak positively from memory of transactions so remote, after lapse of 20 years.

Q. Can you state that $350 constituted the full, fair value of all the property above specified, not taking into consideration the complicated title, and the numerous remote and scattered heirs?

(Objected to as irrelevant and not responsive to any evidence in the examination-in-chief.)

616 A. I do not, taking it free from those objections; certainly not its then intrinsic value.

Redirect:

Q. While you say that you have no independent recollection of the transaction between you and M'r Bayliss, apart from the memorandum you made in your book, I will ask you to state whether, upon your examination of the memoranda, a copy of which you have before you, you are able to state that the matters therein recorded are correct?

(Objected to.)

A. I am so able to settle from that examination.

JOHN CARROLL BRENT.

Sworn and subscribed to before me this 14th of February, 1874.

J. J. JOHNSON,
Exam'r in Chancery.

617 Adjourned till Monday next, at 3 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above adjournment. Present counsel for defendant. Complainant's counsel being absent, adjourned till Tuesday, the 17th ins't, at 3 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to adjournment.

Present, counsel on either side, when GEORGE T. JONES, being duly sworn on the part of the defendant, says:

I am 58 years of age, and reside in Washington, D. C.

Q. Where did you reside before coming to Washington, and what has been your business in past years?

A. I reside' in Carlisle, Penn., from 1816, the time of my birth, till 1831. From 1832 to 1840 I resided in New York; and from 1840
618 to 1870 I resided in Cincinnati, Ohio. The balance of the time I was in Washington. My occupation is that of a bank-note engraver.

Q. How are you at present engaged—in what business?

A. I am a member of the Columbia Bank Company, in this city.

Q. State, if you please, whether, in in connection with your art, you have had occasion to familiarize yourself with handwriting, and what your opportunities have been to acquire an accurate knowledge as an expert.

A. I have had occasion frequently, for the last thirty odd years. For thirty odd years from the time I went to Cincinnati, in addition to my judgment of the genuineness of bank-notes, bonds, and other in-
619 struments, I have been frequently called upon, upon handwriting, and many times have been before the courts upon this subject.

Q. I will ask you to state, M'r Jones, whether, from your experience in passing upon handwriting, whether genuine or spurious, you consider yourself an expert.

A. Well, sir, I believe I can tell where handwriting is exhibited, being in controversy, whether it is genuine or not, with the genuine to compare with it.

Q. Are you acquainted with the handwriting of Henry S. Davis or Samuel A. Peugh?

A. I am not.

Q. I will ask you now to look at these papers, Exhibit B, R. D. M., Exhibit C, R. D. M., and Exhibit D, R. D. M; Exhibit E, R. D. M., Exhibits H, I & K, R. D. M., appended to the deposition of H. S.
620 Davis, and tell examiner your opinion as to the genuineness of the signatures, it being conceded that some of them are genuine, and the genuineness of others being in dispute.

(Objected to by M'r Stanton.)

A. Is it the signature of Davis you looking after?

M'R NORRIS. Yes; that is all the signature there is to them.

Witness says: Well, I should say that those three were written by the same hand—that is, Exhibit B, C, & D. Where the signature is

irregular, I should say was by the same hand, being Exhibit E. I don't believe those two are on Exhibit I & K are written by the same hand that wrote the others.

Q. When you say that you don't believe the name of H. S. Davis on I and K is written by the same hand appended to the others pa-
621 pers before mentioned, do you not refer to the endorsement?

A. I refer to the endorsement on the back.

Q. Have you seen those papers before? and, if so, state where.

A. I have seen them before in this office.

Q. Did you see them elsewhere?

A. I saw them in your office.

Q. State, if you please, whether you have examined those signatures on the exhibits first named and the endorsements on the two exhibits last named sufficiently to enable you to form a correct judgment.

A. I believe I have, sir.

Q. You can state now the reasons, if you have any, for your conclu-
sions as to those endorsements not being in the handwriting that
622 is annexed to the other four exhibits. In other words, whether it is your opinion that all were not written by the same hand.

(Objected to by M'r Stanton.)

A. Well, the first reason is this: The person who signed these three first notes evidently wrote them—I mean the checks; and whoever endorsed the other two checks, in my opinion, wrote them—filled them up. That is on Exhibits I and K. And for the reason that I see the same characteristics in the same handwriting and differing in their characteristics from the signature of the first three. In addition to that, there is one mark here, it is in the "S" in the endorsement on Exhibit I. It
differs essentially in the S'S in the first three in that up-stroke
623 and down-stroke of the *of the* top of the "S" is tremulous and the lines detached. I am looking on "I" especially, showing a design, and after the loop is made, which would almost make this a "G" rather than an "S," the pen was evidently removed and again applied to finish the "S." The down-stroke of the "S" is straight and without the freedom of the natural stroke of the pen, as in the first signatures. I am satisfied that the man that wrote the signatures on the endorsements of "I" & "K" is a better penman than the person who wrote and signed the other three checks. In no instance in the first three checks does the word hundred begin with a capital, as in the filling of the two latter
checks. I can see striking similarity in H. S. Davis in the two
624 latter checks to the endorsement of the same, as compared with the signatures on the three former checks. I don't see anything else. One thing more; there is also a similarity between the capital H's in the two latter checks with the H's in the endorsements, both differing from the H's on the three former checks.

Cross-examined:

Q. In what way have you been called upon to pass judgment as to the genuineness of bank-notes, bonds, and other instruments?

A. I have been called upon for many years by sundry persons, especially the bankers of Cincinnati and to private individuals as to bank-notes, and by attorneys, and especially district attorneys, before
grand juries, in criminal courts in Hamilton County, in Ohio.

625 Q. In what manner did you qualify yourself for thus passing judgment upon the genuineness of bank-notes, bonds, and other instruments. Was it solely in your occupation as an engraver?

A. Yes, sir; my business as an engraver brought me in contact, as such things naturally.

Q. In any other way than as an engraver have you qualified yourself to pass judgment upon the genuineness of handwriting?

A. Yes, sir; because my attention has been called, I might say, hundreds of times upon the subject of handwriting.

Q. But was it solely in your occupation as an engraver that you first acquired that qualification which first led to your presuming to pass judgment in respect to the genuineness of handwriting?

626 Yes, sir; having commenced engraving in my youth, and continued in the business for years, that led me to judge of other matters.

Q. Now, in what cases have you testified as an expert as respects the genuineness of handwriting?

A. Well, there have been so many within thirty-odd years it would be impossible to specify all or half. I mention one case in Cincinnati, I don't know how many years ago, probably twenty; was a case of series of notes—promissory notes. Those cases were, I think, Hughes against Braekman & Bodman against Braekman. It is difficult to recall. I have often been called before the grand jury. That is one of the most prominent. I was subpœnaed from Cincinnati once to come here in Schureman's case.

Q. Can you recall any other prominent case?

627 A. Yes; I remember a case, Lane against Pomeroy—George Lane, of Lawrenceburg, Ind. That was before the district court at Indianapolis, if I remember right. I was summoned to go down there; I can't say exactly how long ago. It was before the rebellion, some 22 or 23 years; I can't say exactly.

Q. Now, will you state what characteristics you find common to the handwriting on the endorsements on I and K and the filling up or main portion of those checks, and not exhibited in the handwriting of Exhibits B, C, & D?

A. Well, sir, in the first I judge by the weight of the pen, the manipulation of the pen, and the freedom of the pen. Take the H's, for instance, and endorsement; then compare them to the two H's,

628 and compare them to the word hundred and the filling up those checks, as compared with the weight of the pen and the use of it in the three H's on the first three.

Q. Is that all?

A. The endorsement on the two latter checks and the freedom of the pen correspond with the writing in the filling up of those checks.

Q. Is that all?

A. All that, Mr. Stanton; and do not correspond with the filling up or the signatures of the three former checks.

Q. Is that all?

A. That is all.

Q. Do you know Mr. Hale, the paying-teller, and Mr. Moffatt, the receiving teller, at the U. S. Treasury?

A. I can't say that I am.

Q. Duties such as theirs qualify persons to express an intelli-

629 gent opinion in respect to the genuineness of handwriting, especially of signatures.

(Objected to as not relating to any evidence given by the witness in chief; and I further state that if the plaintiff wish' to examine M'r Jones on the capacity of such officers, he must call him as his witness.)

A. Well, my experience has been with tellers, excepting where you find an old man, a man of long experience, that the opinions of bank-

tellers are very little to be relied on in such matters. I would rather have a good old law or an old business man.

Q. Then I understand you to indicate the opinion that the daily examination by persons holding the responsible positions I have indicated at the U. S. Treasury of checks, bank-notes, bonds, and
630 other instruments, with a special reference to ascertainment of the genuineness of the signature thereto, does not qualify, or have a tendency to qualify, such officials to express an intelligent opinion in respect to the genuineness of handwriting, especially of signatures?

(Objected to.)

A. I don't mean to say it has not a tendency in that way, but I mean to say my experience with cashiers and bank-tellers has been that their duties in the bank or such place run in ruts, and they are not thrown out in this matter as an engraver, or as an experienced penman.

Q. Then, without reference to this comparison of skillfulness you have just made, I understand you now to concede that daily duties
631 such as I have referred to have the tendency to qualify persons to express an intelligent opinion in respect to handwriting, especially as to signatures?

(Objected to.)

A. I do not think I could add anything to my former answer.

Q. I desire you, if you are willing, to inform me whether, not comparing the officials indicated in my questions with persons engaged in your own occupation, or other occupations, in point of skillfulness or reliability, you concede, or whether you deny, that daily duties and daily examinations, such as are indicated in one of my preceding questions, tend to qualify persons to give an intelligent and reliable judgment in respect to the genuineness of handwriting, especially of signatures?

(Objected to.)

632 A. I don't know, M'r Stanton, that I can add anything to what I have said. If men apply themselves diligently to anything, to any occupation, of course they must grow in it, if they have ordinary intelligence, and acquire skillfulness in it.

Q. Now, you are quite clear that the endorsements on I and K were made by the same person?

A. I have not a shadow of a doubt about it.

Q. Now, if you were satisfied that M'r H. S. Davis wrote and signed Exhibits B, C, and D, that M'r H. S. Davis said, under oath, that he would not swear that the signature on Exhibit I was not his, and also said, under oath, in respect to Exhibit K, that he should think that it also was his signature, except that "S," which to him looked a little strange, and if you were satisfied that M'r S. A. Peugh wrote the
633 face of Exhibits I and K, and stated, under oath, that he gave said checks to H. S. Davis, and saw the latter endorse one of them, and both of them were returned to him through his bank; if you were satisfied that there were corresponding entries upon the bank-book of the payments of these precise amounts about their date, of checks drawn by M'r Peugh; that, in the opinion of the banker, and experienced and elderly man, in the opinion, also, of two other witnesses, whose duties for years had required them, in responsible positions, to make daily examinations for the ascertainment of the genuineness of handwriting, these endorsements I & K were made by M'r H. S. Davis—if you are satisfied of all of these facts, would you still express the confident opinion, involving the perpetration both of perjury and
634 forgery, that the endorsements referred to were made by the same hand which wrote the face of the checks?

(Objected to.)

A. Well, I can only answer that this way: If I were on the jury, and such a case was put, I should decide according to the credibility of the witnesses. But as to a matter of eye-sight and experience, I don't think forty witnesses would change my opinion. That is all I shall answer to that.

Q. Am I then to understand you to say that if you were satisfied of the facts indicated in my preceding question, you still would express the confident opinion that the endorsements of I and K were written by the same hand which wrote the face of said checks?

635 A. I should follow my own judgment on what I see in matters of that kind. Well, just put in this shape, I would be of the same opinion still; my experience teaches me so.

Q. Have you the same degree of confidence that the endorsements are by the same hand which wrote the face as exists in your mind in respect to the two endorsements having been written by the same man?

A. Yes; I am as certain that the same hand wrote the face and endorsements as I am that the same man wrote the two endorsements.

Q. And you maintain that if you were satisfied of everything indicated in one of my preceding questions, there would still not enter your mind a shadow of doubt that the same hand wrote endorsements and face, and that both forgery and perjury had been perpetrated?

636 (Question objected to by M'r Norris, for reasons he need not state.)

A. Well, in the first place, I don't like to say or admit that any forgery or perjury has been committed. I don't know anything about it. But I still believe that the person who wrote those two last checks, I & K, wrote the name on the back of both. That is my opinion.

(Question repeated. Same objection.)

Whether there would be any doubt would depend upon circumstances.

Q. If you were satisfied that testimony such as I have referred to had been given in this case, and if you were satisfied, also, that such grave issues as perjury and forgery were involved, would you have no

637 desire or would you consider it unnecessary to make any larger or more careful comparison than that which has been made by you?

A. I don't think I should.

Q. How long did you examine the papers in M'r Norris' office?

A. I can't tell. It might have been ten or might have been fifteen minutes.

Q. In distinguishing the characteristics which you say are found in the handwriting of certain of these exhibits, and are not found in others, you specify manipulation. In what respect does the manipulation differ?

A. Just as one man's handwriting differs from another—no two are alike.

Q. In what respect is the manipulation, as you term it, the same in the endorsements and face of Exhibits I & K, and different as be-

638 tween them and Exhibits B, C, D, and the signature to E?

A. Well, the filling up of I and K are evidently in the same handwriting, and the signatures on the books I believe to be in the same handwriting, with the addition of an evidence of an attempt to copy another man's handwriting; and the filling up of the other three checks and three signatures attached are evidently written by the same man.

Q. Is that the only answer you have to make to the preceding question?

A. I have answered it to the best of my ability.

GEO. T. JONES.

Sworn and subscribed to before me this 21st of Feb'ry, 1874.

J. J. JOHNSON,
Exam'r in Chancery.

639 SATURDAY, *Feb'y 21st*, 1874.

Met pursuant to agreement.

Present, counsel on either side; when

CHARLES E. WEAVER, being sworn, says:

I reside in Washington, and I am 52 years of age, and a lawyer by profession.

Q. How long have you been in the practice of the law?

A. I was admitted to the bar on the 3d of March, 1845.

Q. Do you know anything concerning the quantity of real estate conveyed the heirs of Young to Buckner Bayliss about the year 1854? If so, state.

A. I know nothing whatever of either of those parties beyond the estimates I have made.

Q. From what did you make an estimate, and what was that estimate?

(Objected to.)

640 A. I will state this: that some months ago M'r H. S. Davis placed in my hands a paper stating to me that M'r Maury had computed the area of certain lots in certain squares designated, and that M'r Maury, since the computation, had died, and desired me to take up the little paper which I hold in my hand and recompute the area in certain lots mentioned in this paper in order to verify, so far as I could, the truthfulness of M'r Maury's computations. I did so, and after a great deal of care and precision I prepared this statement, the truth of which I swear. The said paper is herewith filed, and marked "Exhibit C. E. W., No. 1."

(M'r Stanton objects to the exhibit as irrelevant and inadmissible.)

641 I computed the area of the lots named in this exhibit in squares 856, 673, 617, 959, square north of square 747, square north 1053, square 910 and square 911.

Cross-examined by M'r Stanton:

Q. You don't mean to indicate any opinion whatever as to the actual or marked value of this property or of any part of it?

A. Not in the slightest degree.

CHARLES E. WEAVER.

Sworn and subscribed to before me this 21st of Feb'y, 1874.

J. J. JOHNSON,
Exam'r in Chancery.

Adjourned till March 4th, at 3. p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above.
Present, counsel on either , when

JOSEPH F. BROWN, being sworn, says:

642 I live No. 2422 K street in this city. I have been living in Washington thirty years last November.

Q. During that time how have you been engaged, and in what business?

A. I was a clerk in the House of Representatives for 4 years. Then I was a clerk in the Adjutant-General's Office, War Department, for six years, the last three of which I was chief clerk. I resigned in 1856 to accept the position as manager of the Washington Gas-Light Company, which I held for twelve years. I was an alderman from the 3d ward for ten years, three years of which I was president of the board. I was commissioner and treasurer of the Metropolitan Police from its first organization for five years. Since 1868 I have not been engaged in any active business.

643 Q. State whether or not you had any transactions in real estate in said city in the years 1854, 1855, 1856, 1857, 1858; and, if so, what was the character of it.

A. From 1852 to 1859, I was quite largely engaged in the purchase and sale of real estate in this city. I was not a broker, but I was attending sales of such property, and otherwise purchasing privately for myself and friends whenever I thought money could be made by the transaction.

Q. Can you state if there was any difference of value in real estate in said city from the years 1854, 1855, 1856, 1857, and 1858; and, if so, what was that difference and what was the cause of it so far as you recollect?

A. I do not think there was any depreciable difference in the
644 value of real estate in this city in 1854, 1855, and the first half of 1856. In the year 1857 property depreciated in value fully one-half, which continued in 1858, and the cause of it was the stringency in the market, otherwise what might be called the panic of 1857 and 1858.

Q. Can you state whether, in your opinion, what you call the stringency in the money market, or panic, had any effect upon the value of real estate in this city; and, if so, to what extent?

A. It had the effect, as I have stated, to produce a shrinkage in the value of all real estate in the market, on account of the absence of money for such purposes and a general want of confidence as to the time when this panic would cease, and fully to the extent of fifty
645 per cent., as I have heretofore stated—that is, the difference of the value of property in 1854, 1857, and 1858. The panic let up in the latter part of 1858, but real estate did not go up until the second year of the war.

Q. Was that depreciating effect greater on unimproved than improved real estate?

A. Unquestionably greater on unimproved than improved real estate.

Q. State in relation to its effect on unimproved property, whether it was greater on that which was central or on that which lay outside on the limits.

A. There was little if any demand for or sales of property on the outskirts of the city, you may call it. I don't know exactly what to name it. What sales to the best of my recollection that took
646 place during 1857 and 1858 of such real estate was centrally lo-

cated. Undoubtedly the effect of the depreciation was greater on the outskirt property than any other.

Q. When was real estate in this city at its highest value between the years 1852 and 1862?

A. If Mr. Norris will limit the question to the beginning of 1862, I answer in 1854 and 1855.

Q. Did you make any purchases and sales of real estate in person or together with others during the years 1854, 1855, 1856, 1857, and 1858? If so, to the best of your recollection state what and where, and whether there was any variation in the market value during that period; and, if so, about what percentum from 1855 to 1858?

(Objected to.)

647 A. I purchased and sold during those years for myself, but principally for others, a considerable quantity of real estate in this city. It is impossible for me to remember distinctly all the purchases and sales made by me after the lapse of so great a time, but I remember distinctly the transactions in two cases, located in different portions of the city. Early in 1854 I bought about eleven thousand square feet of ground in square 101, on I street, near Penn. avenue at fifty cents per foot. In the fall of that year I sold the same at sixty cents, one-fourth cash, balance in one, two and three years.

The first note was paid, and a portion of the second; the third, which matured in autumn of 1857, was not paid. I allowed it to stand over until the spring of 1858, when I exposed it to be sold at public

648 auction, and the highest bid made was twenty-five cents. I advised that the offer should not be accepted, and after the lapse of some months, at the instance of the purchaser, I took the property back for the unpaid balance of the original purchase, which was at the rate of about thirty cents per square foot.

The next case that I call to my recollection was in square 687 on Capitol Hill, which I had sold in 1854 for 75 cents per square foot, cash. The purchaser removed from the city in 1857, leaving me as his agent with instructions to sell the property, as he never expected to return to the city. In the month of November, 1857, after due notice, the property was offered for sale at public auction and the highest bid was thirty-

649 five cents, which I declined. In the summer of 1858 I offered the property again for sale at auction, and the highest bid was 33 cents, which, under instructions, I also refused. He held it until the government bought it last year at two dollars. These are the only distinct cases that I now remember; a great many other small transactions I can't now recall, it has been so long ago.

Cross-examined by M'r Stanton:

Q. Did you yourself own in 1857 or 1858, property which you had bought in 1854?

A. I have stated that I owned the property in square 101 in 1858 which I bought in 1854. I did not own the property in square 687 in 1858.

Q. That is the only property owned by you in 1857 or 1858 which you had bought in 1854?

A. Not by any means, but it is the only piece that I now remember to have tried to sell during those years.

650 Q. Would you in 1857 or 1858 have sold the rest of the property bought by you 1854 *from* one-half what you paid for it in 1854?

A. Certainly not, unless my necessities compelled me to make the sacrifice.

Q. At whose instance was the property in square 101 sold; and was it sold under deed of trust to secure residue of purchase-money?

A. I think the purchaser's given name was Joseph; his surname was Lewis. I think his name was Joseph Lewis. No deed of trust was ever given, as a deed in fee was to be given on the payment of the residue of the purchase-money.

Q. You retained the title, then, and you caused the property to be offered at public auction in November, 1857, for the unpaid pur-
651 chase-money due to you, no other person being the creditor of the purchaser who had bought from you in 1854. Is that right?

A. I can't remember whether I sold it or that it was sold at the instance of M'r Lewis. He was present at the sale. It certainly was offered for sale by his consent.

Q. And he is the person whom you advised not to accept the offer of 25 cents?

A. Of course.

Q. The sum offered would have been sufficient to have covered the indebtedness to you.

A. I am under the impression that it would, but that is a question of calculation.

Q. And your advice to him not to accept the offer was made for his benefit, and was not necessary to secure to you the amount due you?

652 A. It was for his benefit. But I was anxious that he should avoid the sacrifice of the money already paid. I required the money overdue to meet my obligations contracted on the faith of this and other payments which were not made on account of the stringency in the money market, as I believe.

Q. Do you know what was the value per square foot of property in the neighborhood of 8th and 9th streets east, and H and I and K streets north, in 1857?

A. I do not; never having dealt in property in that locality, it being, as I considered, undesirable.

(The latter part of answer objected to by plaintiff's counsel as not responsive to the question, irrelevant, and impertinently intended.)

653 Q. And of course you do not know what property thus situated was worth in 1854 per square foot?

A. Of course I do not.

Q. Nor in 1858, per square foot?

A. Of course not. I had no knowledge of the value of property in that locality at any time.

Redirect:

Q. If the squares referred to by M'r Stanton, to wit, 910 and 911, were then held under a corporation deed by a party who claimed to have bought them for taxes due the city of Washington, what would you have considered them worth?

(Objected to.)

A. In all my transactions in real estate I never would purchase at any price property upon which there was a corporation deed or other cloud of title, because I was unwilling to buy a lawsuit. I would
654 not buy at any price, and certainly would not pay the annual tax upon any such property.

Q. Would you have given $2,000 for those two squares of ground in the year 1857 or 1858 when there was at that time a tax-title outstanding and threatened to be enforced for the recovery of the property?

(Objected to.)

A. For the reasons stated I would not have bought the squares named at any price, and would not have paid $2,000 for any ten squares in that locality so situated. I would not have had anything to have done with it if a man had given it to me. I would not have had it, because I would not go to the expense of a lawsuit to secure a
655 perfect title even if that had been the result of the lawsuit.

JOSEPH F. BROWN.

Sworn and subscribed to before me this 4th of March, 1874.

J. J. JOHNSON,
Exam'r in Chancery.

Adjourned till the 15th inst. at 3 p. m.

J. J. JOHNSON.
Exam'r in Chancery.

Met pursuant to above.

Present, counsel for M'r Davis; M'r Stanton, for M'r Peugh, being absent.

Henry S. Davis being recalled.

Q. George Simms, a witness on behalf of plaintiff, in his examination-in-chief, says: "M'r Davis came up in the same week with two other gentlemen—one was M'r Winder; the name of the other I have forgotten—and drew up an agreement that I was to pay him punctu-
656 ally and leave the rent, one dollar and a half, with M'r Winder, or else I would have to move. I have the agreement. That is all." M'r Davis, please state whether at the time you and M'r Winder went to the house and someone else—whether such an agreement was drawn up; and, if not, when and where was it drawn?

A. There was no agreement drawn up at Simms' house. Prior to the drawing up of the agreement referred to I notified Simms in person that he had built a house on my property, and asked him why he done so. He said it was at the instance of M'r Peugh. I told him he would have to move the house off my property or I should make him do so. He asked me to let him see M'r Peugh, and after doing so he
657 would call and see me. He did call to see me, and stated that he had seen M'r Peugh, and that he was satisfied that the property belonged to me after his conversation with M'r Peugh, and asked me if I would let him stay there if he would pay me rent. I told him I would from month to month at a small rentage, and further provided that he should enter into a written agreement to become my tenant.

This conversation took place in M'r Winder's room (or one of his rooms; he had two, I don't know which one it was), in the Intelligencer building, and M'r Winder was authorized by him and myself to draw up the agreement, and at Simms' request he stated that he hadn't time to wait for the paper to be drawn up, and asked that we would
658 come to his house with the paper some hour after dark; the hour I don't remember, as he was at work a long way from home and didn't get home until after night-fall sometimes.

M'r Winder, M'r Hilton, and myself went out on the evening of the day of which the agreement was made, and the papers were signed, and Simms paid Winder, not that night I think, but a short time afterwards, the rent that had accrued from the time he went on the place, which he stated was three months, which was four dollars and a half, at one dollar and a half a month. That was all that transpired.

(Witness is here handed a paper purporting to be the lease from him to Simms, filed as an exhibit to witnesses testimony-in-chief, and
659 asked:)

Q. Is that the paper?

A. Yes, sir; that is the paper.

Q. George Simms states that in conversation at the time with you and Mr Winder and this unknown gentleman, at his house, that you told that Mr Peugh owed you $2,000, which you had loaned him on the square. Did you say so?

A. I did not, sir; nor was there anything said on that subject whatever, or any other subject except, the pigament of the papers or execution of them.

Q. Did you at any other time or place tell the said Simms that Mr Peugh owed you $2,000?

A. I never did, sir. It is possible that when I first went to see Simms (that was prior to the drawing up this paper) that I told Simms
660 that I had bought the property from Mr Peugh and paid him $2,000 for it. But no conversation never took place between Simms and myself at any time or place in which I stated to him that Mr Peugh owed me $2,000.

Q. Mr Peugh states in his testimony, upon being recalled the second time, that you endorsed one of the checks marked Exhibits I and K, for $112.50 each, in his presence. Is that so or is Mr Peugh mistaken?

A. It is not so, sir.

Q. What was your habit as a business man on receipt of checks as to the time when you endorsed them?

A. When I took them to the bank where I kept my account, or if I went to the bank on which the checks were drawn (which I seldom done), I put my name on them there.

661 (Counsel for the defendant now presents a certified copy of the deed from George W. Young et ux. to Buckner Bayliss, bearing date on the 21st day of March, 1854, to be read in connection with said Bayliss' testimony and that of J. Carroll Brents. The said paper is herewith filed, and marked "Exhibit J, J, J, No. 1.")

The above testimony is taken subject to be cross-examined by Mr Stanton or to any objection thereto.

J. J. JOHNSON,
Exam'r in Chancery.

Met this 1st day of April, 1874, by consent of parties, when the counsel for plaintiff waives cross-examination of Mr Davis, but desires commissioner to note his objection to the introduction in evidence of the deed from Young to Bayliss above referred to.

H. S. DAVIS.

662 Sworn and subscribed to before me this 1st day of April, 1874.

J. J. JOHNSON,
Exam'r in Chancery.

The defendant here closes his case.

J. J. JOHNSON,
Exam'r.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I John J. Johnson, examiner in chancery, do hereby certify the pursuance of agreement the foregoing depositions were taken down and by me reduced to writing in the presence of and from the statement of the witnesses at the time and place designated in the caption thereof, d were then and there by me read over to the witnesses, and by them subscribed in my presence, and in the presence of the
663 respective counsel, who were then and there attending; the wit-

nesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue *at issue* in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

J. J. JOHNSON,
Exam'r in Chancery.

664 EXHIBIT J. J. J., No. 1.

Deed.—George W. Young et al. to Buckner Bayliss.—Recorded 21st July, 1854.

This indenture, made this twenty-first day of March, in the year of our Lord one thousand eight hundred and fifty-four, between George W. Young and Henrietta E. Young, his wife, of Washington City, in the District of Columbia, of the first part, and Buckner Bayliss, of said city and District, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of three hundred and fifty dollars, current money of the United States, to them in hand paid, at or before the sealing and delivery of these presents, by the said party of the second part, the receipt of which is hereby acknowl-
665 edged, have given, granted, bargained, and sold, enfeoffed, conveyed, released, and confirmed, and by these presents give, grant, bargain, sell, convey, release, and confirm unto the said Buckner Bayliss, his heirs and assigns, forever, all the right, title, and estate, legal or equitable, in or to the following described pieces or parcels of ground lying and situated in said city, so far and to that extent only as the same are passed to and vested in them, the said parties of the first part, under and by virtue of three deeds of conveyance from the heirs at law and legal representatives of Natley Young, original proprietor of all their legal and equitable outstanding title and estate in the said pieces of ground, the first dated 9th July, 1853; the second, the 5th November, 1853; and the third, the 12th November, 1853, and duly recorded
666 among the land-records of Washington County, and also as two of the heirs at law and legal representatives as aforesaid, the said pieces and parcels of ground being known on the plat thereof as lots numbered five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven in square numbered eight hundred and fifty-six (856), and all of square numbered nine hundred and ten (910) and nine hundred and eleven (911); lots numbered six (6), eleven (11), twenty (20), and twenty-one (21), in square numbered six hundred and seventy-three (673); lots numbered eight (8) and seventeen in square six hundred and seventeen (617); lots numbered seven (7), and eight (8), nine (9), ten (10), and eleven (11), in square numbered *numbered* nine hundred and fifty-nine (959), square north of seven hundred and
667 forty-seven (N. of 747), and square north of ten hundred and fifty-three (N. of 1,053), together with the buildings, improvements, rights, privileges, appurtenances, and hereditaments to the same belonging or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof.

To have and to hold the said pieces and parcels of ground, with the appurtenances, so far and to that extent only as the title, right, interest, and estate therein are vested in and passed to them, the said parties of the first part, as two of the heirs at law and legal representatives of said Natley Young, and by virtue of said herein referred to deeds unto him, the said Buckner Bayliss, his heirs and assigns, forever, to his and their sole use, benefit, and behalf forever.

668 In testimony whereof the said George W. Young and Henrietta H. Young have herewith subscribed their names and affixed their seals, the year hereinbefore mentioned.

G. W. YOUNG. [SEAL.]
H. H. YOUNG. [SEAL.]

Signed, sealed, and delivered in the presence of—
T. C. DOUN.
J. H. GODDARD.

DISTRICT OF COLUMBIA,
Washington County, to wit:

We, the subscribed two justices of the peace in and for the county aforesaid, in the District aforesaid, do hereby testify that George W. Young, party to a certain deed bearing date on the 21st of March, 1854, and hereto annexed, personally appeared before us in our county
669 aforesaid, the said George W. Young being personally known to us as the person who executed the said deed, and acknowledged the same to be his act and deed; and we also further certify that at the same time and place Henrietta H. Young, the wife of the said G. W. Young, party to the said foregoing and annexed deed, personally appeared before us, in our county aforesaid, the said Henrietta H. Young being well known to us as, the person who executed the said deed, and being by us examined privily and apart from her husband, and the deed aforesaid fully explained to her, she, the said Henrietta H. Young, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she would not to retract it.

670 Given under our hands and seals this twenty-first day of March, A. D. one thousand eight hundred and fifty-four.

J. H. GODDARD. [SEAL.]
T. C. DOAN. [SEAL.]

671 *Decree of Special Term.—Filed Sep. 28, 1874.*

SAMUEL A. PEUGH
vs.
HENRY S. DAVIS. } No. 1713. Equity.

This cause coming on to be heard on bill, answer, exhibits, and proofs, and being argued by counsel, and on consideration thereof it is this 28th day of September, 1874, ordered, adjudged, and decreed that the bill in this case be dismissed, and that the complainant and the defendant each pay his own costs.

D. C. HUMPHREYS,
Justice.

And from this decree the complainant, in open court, prays an appeal to the general term.

672 *Decree in General Term.—March 6, 1875.*

In the supreme court of the District of Columbia. In general term, March 6, 1875.

SAMUEL A. PEUGH, COMPL'T,
vs.
HENRY S. DAVIS, DEF'T. } 1713. Equity docket 9.

This cause having been heard at a previous day of this term on the

record of the special term in equity, and upon argument of counsel on both sides; whereupon, on consideration of the whole matter, it is ordered, adjudged, and decreed that the decree of the special term of September 28, 1874, from which the appeal to this court was prosecuted, be and the same is hereby affirmed with costs.

Chief-Justice Cartter and Justice Wylie dissenting.

And from this decree the complainant in open court prays an appeal to the Supreme Court of the United States, and it is allowed.

By order of the court.

673 In the supreme court of the District of Columbia, the 10th day of April, 1875.

SAMUEL A. PEUGH
vs.
HENRY S. DAVIS. } No. 1713. Equity docket 9.

Know all men by these presents that we, Samuel A. Peugh and A. T. C. Dodge, are bound unto the above-named Henry S. Davis in the sum of five hundred dollars, to be paid to the said Henry S. Davis, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 10th day of April, 1875.

Whereas the above-named Samuel A. Peugh hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Samuel A. Peugh shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

SAMUEL A. PEUGH.
A. T. C. DODGE.

Sealed and delivered in presence of—

Approved.

A. WYLIE.

674 *Clerk's certificate.*

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 15th day of October, 1875.

[SEAL.]

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

(Indorsement on cover:) No. 243. Samuel A. Peugh, appellant, vs. Henry S. Davis. Dist. of Col. sup. court. Filed 16 October, 1875.

Supreme Court of the United States.

No. 243.

SAMUEL A. PEUGH, APPELLANT,

vs.

HENRY S. DAVIS, APPELLEE.

Appeal from the Supreme Court of the District of Columbia.

BRIEF ON BEHALF OF THE APPELLANT.

R. T. MERRICK,
T. T. CRITTENDEN,
For Appellant.

Judd & Detweiler, Prs.

Supreme Court of the United States.

OCTOBER TERM, 1877.

No. 243.

SAMUEL A. PEUGH, APPELLANT,

vs.

HENRY S. DAVIS, APPELLEE.

Appeal from the Supreme Court of the District of Columbia.

BRIEF ON BEHALF OF THE APPELLANT.

I. STATEMENT OF CASE.

In March, 1857, Samuel A. Peugh, the appellant, borrowed from Henry S. Davis, the appellee, $2,000, for sixty days, at the rate of 3¼ per cent. interest per month.

As security for said loan Peugh gave Davis a deed in fee, absolute on its face, and containing a covenant of special warranty, conveying squares 910 and 911 in Washington city, bounded as follows: Square 910 by I and K and Eighth and Ninth streets, and Square 911 by H and I and Eighth and Ninth streets northeast, containing in all 156,984 square feet; square 911 containing 78,864 square feet, and square 910 containing 78,120 square feet.

The debt and interest were paid shortly before maturity, and the deed, which had not been recorded, was returned to Peugh.

About the 6th of May, 1857, Peugh obtained another loan from Davis of $1,500 for sixty days, at the same rate of interest as that mentioned above, and as security therefor redelivered the said deed to Davis.

Peugh was unable to repay said loan, but paid the interest thereon at the rate above indicated, up to the 6th of September, 1857. (Exhibits I and K, Record, pp. 133 and 134.)

On the 7th of September, 1857, Davis caused the deed referred to, to be recorded.

Subsequently, and on or about the 16th day of January, 1858, one Charles H. Wiltberger, instituted proceedings in ejectment against Davis, in whom the title appeared to be by the record, for the recovery of the said squares of ground, claiming to have a tax title to the same. Thereupon Davis called upon Peugh and repeated the demand he had previously made for the payment of his said debt. (Answer of defendant, folio 28, p. 6.)

Peugh was without means to meet his obligation, but received from Davis the further sum of $500, as an additional loan, at the same rate of interest upon which the original loan had been made, and in consideration of the execution of the following covenant, to wit:

Whereas the undersigned, Samuel A. Peugh, of the city of Washington, in the District of Columbia, having *heretofore* sold and conveyed to Henry S. Davis, of the said city, two certain squares of ground in said city, the same being squares numbered nine hundred and ten (910) and nine hundred and eleven (911) in the said city, the said sale and conveyance having been by the said Peugh made with full assurance and *promise of a good and indefeasable title in fee simple*, though the said conveyance contains only a special warranty, the said conveyance to said Davis bearing date on the fourth day of March, A. D. 1857, and being recorded on the 17th day of September, A. D. 1857;

And whereas the title to the said squares so conveyed, as aforesaid, to said Davis, having been now questioned and disputed, the said Peugh doth now, for himself, his heirs, executors and administrators, promise, covenant and agree,

to and with the said Henry S. Davis, his heirs and assigns, in the manner following—that is, that he, the said Samuel A. Peugh, and his heirs, shall and will warrant and forever defend the said squares of ground and appurtenances as conveyed, as aforesaid, unto the said Henry S. Davis, his heirs and assigns, from and against the claims of all persons whomsoever;

And, further, that the said Peugh, and his heirs, executors and administrators, shall and will pay and refund to said Davis, his heirs or assigns, all and singular, the loss, costs, damage, and expenses, including the consideration in said deed or conveyance, which or to which the said Davis, his heirs or assigns, shall loose, incur, pay, or be subject to, by reason of any claim or litigation against or on account of said squares of ground or either of them;

And for the full and faithful observance and performance of all the covenants and agreements aforesaid, and for the payment of all the sum or sums of money as therein provided, in the manner prescribed as aforesaid, the said Samuel A. Peugh doth hereby bind himself, his heirs, executors, and administrators, and each and every of them, firmly by these presents.

In testimony whereof, the said Samuel A. Peugh, doth herein so set his hand and seal, on this ninth day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

S. A. PEUGH, [SEAL.]

Signed, sealed, and delivered in the presence of—
FRANCIS MOHUN.
WM. H. WARD.

(Record, p. 10.)

At the same time Peugh executed the following receipt, to wit:

WASHINGTON, D. C., *February* 9, 1858.

Received of Henry S. Davis two thousand dollars, the same being in full for the purchase of squares Nos. 910 and 911, in the city of Washington.

$2,000. S. A. PEUGH.

(Record, p. 11.)

In 1869 Peugh filed his bill to redeem, praying that an account might be taken of what was due to Davis for the principal and interest upon the said loans, and offering to pay the same.

Davis admits that the deed was given to him as security for the loan of $1500, and sets up two defences to Peugh's bill:

First. He claims in his answer that when the Wiltberger suits were brought, in January, 1858, he demanded payment of his debt from Peugh, who refused to pay it, representing that he was without means, but offered to sell out all his interest in the property for $500, and in consideration of that sum, "*to release all equity of redemption, interest, or estate in said squares to this defendant, and to indemnify, and save harmless, this defendant against said suits, generally to warrant and defend the title to said squares of ground;*" that this agreement was carried out by the execution of the papers above quoted, bearing date the 9th of February, 1858, and that the equity of redemption was thereby extinguished. (Record, folios 23 and 24, p. 6.)

Second. In his testimony he claims that it was agreed between himself and Peugh, in the original contract of loan, that if the money was not refunded, at the time stipulated for its payment, he might put the deed on record, and that the property should then become his absolutely; that the money not being paid until the expiration of sixty days after the time when it became due, he did put the deed upon record, to wit, on the 7th day September, 1857; (Record, p. 102;) that the property thereby became his, and that Peugh had no further interest in it whatever; and that after recording the deed, he never, at any time, made any further demand on Peugh for the repayment of the money. And in reference to the transaction of the 9th of February, 1858, he testifies as follows:

"Q. When he demanded $500 for his equity, as you "state, did you say to him that you would be glad to, but "could'nt give that for it?

"A. I did'nt; but, on the contrary, stated to Mr. Peugh "that as between gentlemen of honest fair dealing, he had "no equity there, but he did'nt seem at all to appreciate what "was honest and fair dealing between man and man, and "extorted from me $500 which, if he was an honest man, "he would pay me now. (Record, p. 119.) * * * *

"Q. You have said that Peugh extorted $500 from you, "what do you mean by saying that he extorted $500, "when you purchased as you claimed for that consideration "his equity of redemption?

"A. I say that he extorted that money from me, because "he is an unjust man, and won't stick to his contract; that "contract between us, was that if he did'nt pay that money "within sixty days, the property was to be mine and that "was the end of it.

"Q. Did you in the conversation, in which he proposed, "as you state, to sell for $500, claim the property as being "already your own, and represent to him that he was ex-"torting $500 from you?

"A. I did not only claim that he was extorting the $500 "from me, but it was a piece of high-handed injustice on "his part to make any such claim, and I refused most posi-"tively to give him $500, unless he would enter into a cove-"nant besides to pay the expenses of all the suits that "might be brought against the property, and to make my "title fee simple warranty, which the covenant made and "signed by him evidently set forth. (Record, p. 121.) * *

"Q. Did you consider this property as absolutely yours, "upon the default of the payment of the principal at the "end of the second loan?

"A. I certainly did.

"Q. Is that your opinion still?

"A. That's my opinion still, sir, and if I had been deal-"ing with an honorable man I should never have heard any "more about it." (Record, 126.)

The case, therefore, presents two questions for consider-ation:

1st. Was the right to the equity of redemption cut off by

the failure of Peugh to repay the money loaned at the time stipulated and the consequent recording of the deed?

2d. Was it agreed between the parties on the 9th of February, 1858, that the right to the equity of redemption should be extinguished in favor of the grantee in the deed delivered to Davis on the 6th of May, 1857; and if such was, in fact, the understanding of the parties, will a court of equity, *under all the circumstances of the case*, treat the contract then made as valid and binding, and was it executed in such a manner as to extinguish Peugh's right in the premises?

The court below passed a decree dismissing the complainant's bill. Chief Justice Carter. J. H. Justice Wylie dissenting.

Assignment of Errors.

First. The court erred in not granting to the complainant the relief prayed for in his bill.

Second. The court erred in dismissing the complainant's bill.

Third. The court erred in not finding that the deed in question though absolute on its face, was in fact a mortgage.

Fourth. The court erred in finding that the complainant's right to the equity of redemption was extinguished by the transaction of the 9th of February, 1858.

Fifth. The court erred in finding that the complainant's right to the equity of redemption was forfeited by his failure to pay the loan of $1,500 at the time stipulated for the repayment of the same.

Sixth. The court erred in not decreeing that the complainant was entitled to redeem, and that the defendant should account.

EVIDENCE.

First. As to value of Premises—

WILLIAM BLANCHARD, (Record, pp. 18 and 19):

In 1858 the squares in question, were worth four or five cents per foot.

(*Note.*—Square 911 contains 78,864 square feet, and square 910 contains 78,110 square feet = 156,974 square feet.)

6,279.36

DOROTHY DRIER, (Record, p. 28):

Purchased land in neighborhood at three different times between '54–61. Paid on first purchase three cents per foot; on second, four cents; and on third, five cents.

BUCHNER BAYLISS, (Record, p. 31):

Sold the squares to Peugh in May, 1855, at two and a half cents per foot, or thereabouts; entire purchase price $4,673.

JAMES N. CALLAN, (Record, p. 36):

Real Estate Agent, was engaged in buying and selling real estate in 1858. Purchased from Peugh in early part of 1858, two squares immediately north of square 910. Property at that time, in that neighborhood, was worth from six to eight cents per foot. Square 911 was far more valuable than those purchased by witness. Square 910 was not so valuable as square 911 but was worth more than those purchased by witness. Square 910 fronts on K street, one of the most desirable streets in the city. Square 909, one of the squares purchased by witness, was intersected diagonally by the Baltimore and Ohio Railroad, and its value impaired on that account. The other square, purchased by witness, was a small

triangular square on the boundary, north and east of squares 910 and 911—purchased both squares in one transaction, and got them at a slightly diminished price, because the railroad ran through one of them; paid for them a little over five cents per foot; witness sold these squares in 1859 for $5,000. About the same time witness offered to purchase squares 910 and 911 from Peugh at the rate of six and a quarter cents per foot for the whole—which was about $5,000 for square 911. Peugh declined to sell, stating that he did not wish to part with the ground.

WM. B. TODD, (Record, p. 49):

Witness is sixty-two years of age and has resided in Washington city forty-three years; has been extensively engaged in buying and selling real estate, is acquainted with the value of real estate in the neighborhood of squares 910 and 911.

In 1858 square 911 was worth about five cents a foot, and square 910 about four cents a foot. Would not have regarded the sale of these squares at the rate of *one and one-third* cents per foot—though incumbered by an outstanding, irregular and void, tax-title—as a *fair sale; but should have considered them sacrificed if sold at that price.* (Record, p. 81, folio 824.)

Remembers the financial crisis of 1857, but don't think it affected the price of real estate in Washington city; estimated the property in question knowing all the facts as to what occurred in 1857. Never considered that a financial crisis had any very serious effect in this city, especially, on real estate, for the reason that Washington has very little commercial business; and there are very few of her merchants who sell on credit at the south and west; the dis-

bursements at the Treasury assist her business and avert the consequences of a crisis or panic. (Record, p. 50, folio 193.)

Moses Kelly, (Record, p. 51):

Has resided in Washington city since 1842; is 53 years of age; and has, from time to time, purchased and sold more or less real estate during the entire period of his residence. His opportunities have enabled him to form an opinion as to the value of squares 910 and 911, in the years 1857 and 1858. Square 910 was worth, at that time, three and a half cents per foot, and square 911 was worth two cents more; that is, five and a half cents per foot.

A financial crisis has, comparatively, little effect upon the price of real estate in this city.

An outstanding claim or tax title would have seriously impaired the value of a piece of property.

I. I. Combs, a witness called by the defendant, says of Wm. B. Todd and Moses Kelly:

"Mr. Todd was, at the time spoken of [1857] one of the largest real estate in the District. I do not know whether Mr. Kelly operated in real estate at that time or not. I know he has since. I should suppose that they were men whose judgment in regard to the value of real estate is entitled to great respect, from the extent to which they have operated."

Record, p. 138, folio 550.

The defendant attempted to meet this evidence, as to the value of the property in question, by the testimony of *three* witnesses to the effect that there was a financial crisis, in 1857, which caused a material depreciation, for a time, in real estate in the city of Washington.

I. I. Coombs, (Record, p. 135):

A practicing lawyer in the District of Columbia, and a resident of the District for 23 years—principally engaged during the time of his residence in Washington, in the practice of his profession, but in 1852 and 1853 purchased a good many lots in different parts of the city, and was in the habit of attending auction sales in 1852, 1853, and 1854.

The price of property very materially declined in this city, as well as in the west, after the crisis of 1857, but has no particular acquaintance with the value of property in the locality of the property in question, never having had any interest in that portion of the city, and has not sufficient knowledge upon the subject to say what this property was worth in 1857.

Wm. H. Parker, (Record, p. 144):

A carpenter by trade; had dealt in improved real estate to the amount of between $25,000 and $30,000 worth; the crisis of 1857 had caused a depreciation in values of fifty or one hundred per cent.; information was confined to improved property; had no special information as to property in the neighborhood of property in question.

(*Note.*—Witness gives no evidence as to property in question or as to value of property in that locality.)

George E. Kirk, (Record, p. 148):

A house painter by trade; (p. 150;) was "buying and selling property in a small way;" (p. 149;) from 1849 to 1860 bought and sold from $10,000 to $15,000 worth of property; (p. 150;) the crisis of 1857 caused a depreciation of about one-third.

(*Note.*—Witness gives no evidence as to property in question or as to value of property in that locality.)

Second. As to the Wiltberger tax-title and suit.

Davis testifies that when Peugh first applied for a loan, on the security of the property, he demanded that the evidence of his title should be produced; to this demand Peugh replied that Mr. Ward, the conveyancer, had examined the title and pronounced it to be good. Davis thereupon called on Ward, who informed him that Wiltberger claimed to have a tax-title to the premises, but that this title was good for nothing, and that Peugh had a perfect title to the property. (Record, p. 101, folio 399.)

Davis further testifies that he employed counsel to defend in the Wiltberger litigation, and succeeded in defeating the plaintiff; the case was taken to the Supreme Court of the United States; and about five years after the institution of the proceedings he met Peugh on the street, who informed him that he had employed counsel in the Supreme Court himself, and paid him one hundred dollars to make a motion to dismiss the case, and that the motion had been made and granted, and the case had been dismissed accordingly. (Record, p. 117, folio 467.)

This was the end of the litigation.

Third. As to transaction of 9th February, 1858.

Davis and Peugh directly contradict each other in reference to the character of this transaction. *Peugh* testifies that it was an agreement to lend him an additional $500, at the same rate of interest with the original loan, in consideration of his executing a covenant to protect Davis against all liability for costs in the Wiltberger ejectment suit. That the covenant was accordingly executed; that he continued for some years thereafter in uninterrupted possession of the premises, and that Davis repeatedly thereafter demanded

payment of the entire loan and interest thereon. (Record, pp. 14 and 15.)

Davis testifies that the transaction was one in which Peugh dishonestly extorted $500 from him as the consideration for the transfer of a fraudulent claim of right to an equity of redemption which had, in fact, been forfeited and ceased to exist when he recorded the deed on the 7th of September, 1857; that after denouncing to Peugh the claim set up by him as fraudulent and unjust, and as one which no "*honest fair dealing man*" would make, and repeatedly asserting that any such claim as might have existed, was already forfeited by the non-payment of the loan at the time it was to have been paid, he consented to give him $500 for it, provided he would execute the covenant referred to. (Record, p. 119, folio, 175, 121, 488.)

Davis further says in his evidence, that Peugh never *paid any interest whatever on the loan of* $1,500, *made in the early part of May*, 1857; and that he never demanded payment of either interest or principal *after recording the deed in September*, 1857.

Wm. H. Ward, the conveyancer, testifies in regard to the transaction of February 9th, 1858, as follows:

"Mr. Peugh and Mr. Davis came into my office together and stated that Mr. Peugh had previously made a conveyance of the two squares named in the paper to Mr. Davis; that that conveyance was, in effect, a mortgage; that Mr. Peugh had the right to redeem; and that the matter was then to be settled by a further advance, and that the sale was to be finally completed."

Record, p. 94, folio 372.

Witness does not recollect what was the amount of the further advance. His time was very much occupied in his business as conveyancer, but distinctly recollects the parties coming to his office about this transaction, (p. 97.) "Can only recollect the impression made upon his mind by con-

versation of parties taken as a whole," (p. 97.) Can't recollect what either of the parties said. Can only state general recollection. The Wiltberger tax title was spoken of at the time; the covenant, that is, the paper marked "Exhibit (A)," was given to indemnify Davis "*against the costs of that suit as well as the purchase money of the property*," (p. 99, folio 398.)

The testimony of this witness, together with that of the respective parties, is the only direct testimony as to what transpired at the time this transaction took place. There are important circumstances in the case, however, which throw light upon it, and contradict the statements of Davis in some significant particulars.

1st. Possession.

Peugh states in his evidence (p. 15) that he remained in possession of the premises, and continued, uninterruptedly, to exercise acts of ownership over them; that he caused the squares to be fenced in, and cultivated the ground, and let it out for cultivation, until, at the commencement of the war, the fences were destroyed by the soldiers, (p. 15, folio 63;) and that afterwards, in 1865, he leased square 911 to one George Simms, who built a small house thereon; that up to this time he never heard of any objection on the part of Davis to any of his acts of ownership, (p. 16.)

JOHN MANHIN, (Record, p. 16):

> Mr. Peugh cultivated the squares until the fences were taken away. Witness worked on them for Peugh from time to time until 1861, (p. 17, folio 70.)

WILLIAM BLANCHARD, (Record, p. 18):

> The squares were worked and pastured up to 1861.

TIMOTHY MANHIN, (Record, p. 22):

> Assisted in fencing in the squares, under Peugh's

direction. They were worked and pastured up to 1861.

HENRY DREIER, (Record, p. 26):

When the war broke out Peugh asked witness to look after the fencing around the squares. They were cultivated by Peugh up to 1861.

Mrs. DORATHY DREIER, (Record, p. 28):

Peugh had the squares fenced in; and if any thing was wrong Peugh attended to it and kept it in order. He hired witness to look after the fence, (p. 29.) The squares were used, cultivated, &c., up to 1861, (pp. 28, 30.)

GEORGE SIMMS, (Record, p. 45):

Went to Peugh to rent the ground in 1865; Peugh allowed him to have square on H street. After the house was partly built, and about three months after he had been on the lot, Davis came to his wife and asked her who gave witness permission to build there? She replied Mr. Peugh. Afterwards Davis came up to see witness with a Mr. Winder and another person, and insisted that witness should pay rent to him or he would sell his house. He said Mr. Peugh owed him two thousand dollars which he had loaned him on the two squares.

Witness made agreement to pay Davis rent.

MARGARET N. SIMMS, (Record, p. 47):

Davis came out to her place and asked who gave the right to build there, and said rent must be paid to him.

Davis came again with a Mr. Winder and somebody else. Said he had loaned Mr. Peugh two thousand dollars on the squares, and insisted rent should be paid to him.

The agreement was made to save the house. (*Note.*—Agreement dated 11th October, 1865.)

2d. *Demands on Peugh for payment.*

Peugh states that he was repeatedly called on by Davis to pay both the principal and interest of the loan, and specifies one particular occasion in 1862. (p. 15, folio 61.) The demand at that time was for the payment of the interest. He owed him no other money except the loan in question.

Peugh's statement in reference to this interview is fully confirmed by the testimony of *Richard Hill.* (Record, p. 42.)

Hill states that he is a plumber and gas fitter by trade, resides on P street, between 16th and 17th, and has resided in this city since 1844. That in 1862 he was on the avenue with Peugh when Davis came up and joined them, and said to Peugh that he wanted that two thousand dollars, that he should charge two and a-half per cent. a month, and if he would pay he would give him a deed.

Davis of course contradicts this confirmation of Peugh's statement as made by Hill; but *no attempt was made to impeach the witness.*

3d. *Payment of interest on the loan of* $1,500.

Peugh testifies that at the time he negotiated the loan of $1,500 he agreed to pay interest at the same rate as that agreed to be paid on the previous loan of $2,000. (Record, p. 18, folio 58.)

Davis states that at the time of making the loan there was nothing whatever said about interest, either "legal or illegal." (Record, p. 102, folio 408.) He only expected to receive legal interest, viz: 6 per cent.; because loaned money always carries interest. (106, folio 422.)

The accuracy of Davis' testimony, last above referred to, may be fairly tested by his manner and habit of dealing, as exhibited in other parts of his evidence.

He admits that, on the original loan of $2,000, he received interest at the rate of 45 per cent. per annum, (p. 112, folio 445.)

He says, (p. 113, folio 451 :)

"I have never sought a loan from any man in my life—never sought to loan any man money—but since I have retired from business, in 1859, I have frequently cashed notes for people at just what they would come and say they would take off. I don't know whether it was 45 per cent. or 500,000 per cent; but I don't think it was quite as much as 500,000 per cent."

The following interrogatory was put to him, (p. 126, folio 506 :)

"Have you been involved in any litigation with one Patrick Byrnes respecting usury exacted of him.

"[Objected to by Mr. Davidge, of counsel for the defendant, who advises him to refuse to answer.]

"A. I shall follow the advice of my counsel."

Peugh states in his testimony (p. 13) that on the loan of $1,500 he paid Davis interest, (in accordance with his contract,) at the rate of $112.50 for sixty days; that at the expiration of the sixty days the loan was extended for sixty days more; and he again paid $112.50 at the expiration of that time. (Record, p. 13.)

Davis testifies *positively* that Peugh never paid him any interest whatever on the loan of $1,500, (p. 114, folio 453.)

A paper subsequently introduced, as exhibit (I,) was handed to witness. The paper is as follows, (p. 133, folio 584 :)

"WASHINGTON, D. C., *6th July*, 1857.

"Wm. T. Smithson pay H. S. Davis, or order, one hundred and twelve dollars and fifty cents.

"($112.50.)

"S. A. PEUGH.

"Endorsement on back: H. S. DAVIS."

Witness was thereupon asked if the indorsement, *H. S. Davis*, was in his handwriting? To which he replied:

"I would not swear that that was my signature, although it has some appearance of it.

"Q. Would you swear that it is not?

"A. No," (p. 114.)

Another paper, subsequently introduced as exhibit (K,) was then handed to the witness. This paper is as follows, (p. 184, folio 585:)

"WASHINGTON CITY, D. C., *Sept.* 6, 1857.

"Wm. T. Smithson, banker, pay H. S. Davis, or order, one hundred and twelve dollars and fifty cents.

"$112.50. S. A. PEUGH.

"Endorsement on back: H. S. DAVIS."

Witness was thereupon asked if the endorsement, H. S. Davis, was his signature? To which he replied, "I should think that that was my signature except that S, which does look a little strange." (p. 114.)

He then declares, that "he never in the world" received that paper from Mr. Peugh and indorsed it to the best of his knowledge.

(NOTE.—$112.50 *is the exact interest on* $1,500 *for* 60 *days, at the rate of* 8¼ *per cent. per month.*)

Peugh was subsequently called and testified (p. 85,) that he had given the checks (Exhibits I and K,) to Davis on or about the day of their date in payment of the interest charged by him for the $1,500 loan; each check being given for the use of the money for 60 days; that they were returned to him in the settlement of his bank account with Mr. Smithson, the banker; that he is familiar with Davis' hand writing; that the endorsement H. S. Davis, is in Davis' hand writing, and that he recollects seeing Davis indorse one of them in his presence.

Edward W. Hall, (Record, p. 82):

Paying teller in the United States Treasury. His business calls on him to investigate questions of the genuineness of signatures, having to pay hundreds of checks every day, and being held responsible for the genuineness of the signatures. Has been in his present position for seven years, and all his life, since the age of twelve, in banks, &c. Has examined the signature of H. S. Davis upon Exhibits B, C, D, E, H, I, and K appended to the deposition of Davis, and is of opinion that they were all written by the same person.

(NOTE.—Davis' signature on B, C, D, E, and H admitted to be genuine.)

Frederick W. Moffat, (Record, p. 86):

Receiving teller in the office of United States Treasurer since 1864. Was engaged in the Bank of Albany, New York, about fourteen years, and his duties have required him to make himself familiar with examining signatures to checks, &c. Have examined the signature of H. S. Davis on B, C, D, E, H, I, and K, and is of opinion that they were all written by the same hand.

Wm. S. Halliday, (Record, p. 72):

A broker. Is familiar with the hand writing of Henry S. Davis. Has seen him write repeatedly. Has seen him write and seen him sign his name a great many times.

The name Henry S. Davis on Exhibits L and K, was written by him.

WILLIAM T. SMITHSON, (Record, p. 59):

Banker in Washington city in 1857. His day book and ledger of that year say that on the 8th of July, 1857, he paid a check of Peugh's for $112.50; on the

12th of September, 1857, he paid a check of Pough's for $112.50.

Exhibits I and K show round hole in centre which is found in all his checks filed. Could not identify Davis' hand writing. Has been a banker and is a good judge of hand writing. Signature of Davis on Exhibits B, C, D, and H, and indorsement on I and K, appear to be written in the same hand.

It is an imperative rule with him as a banker to to know that a check is properly endorsed. He himself, paid all checks handed in at the counter. Has some vague impression of having paid Davis some money on checks. (p. 68.)

George T. Jones, witness introduced by defendant, (Record, p. 155.)

Member of Columbia Bank Note Company. Has had much experience for thirty years in examining hand writing, thinks Exhibits B, C, D, were written by same hand, also Exhibit E. Does not think indorsement on I and K, written by same hand as B, C, D, and E. The person who indorsed I and K, also filled them up. Is "as certain that the same hand wrote the face and the endorsement as that the same man wrote the two endorsements." (p. 159, fol. 685.)

Propositions of Law.

1. A deed which is in fact a security for an advance made at the time, is a mortgage in contemplation of a court of equity, and the grantor will be entitled to a re-conveyance on payment; and whether a conveyance absolute on its face

will take effect as a mortgage, depends primarily, if not exclusively, on the nature of the consideration.

Morris *vs.* Nixon, 1 Hd., 118.
Wyman *vs.* Babcock, 19 Hd., 289.
Price *vs.* Robinson, 13 California, 116.
Huntley *vs.* Wheelwright, 29 Md., 341.

2. A court of equity will not allow the right of redemption to be defeated by any agreement making that which is really a mortgage a conditional sale, but will, on the contrary, where the transaction is doubtful, incline to give the instrument effect as a mortgage.

Russell *vs.* Southard, 12 Hd., 139.
Dougherty *vs.* Colgan, 6 Gill & Johnson, 275.
Artz *vs.* Glover, 21 Md., 456.
Baugh *vs.* Merryman, 32 Md., 185.

3. The burden of proof is on the mortgagee, who claims that there has been a sale or release of the equity of redemption, to show that such sale or release was made *fairly, deliberately, and for an adequate consideration.* And where the relation of mortgagor and mortgagee has been once established, though the equity of redemption may be disposed of to the mortgagee, yet unless the transaction appears to be fair and unmixed with any advantage taken by the mortgagee of the necessitous circumstances of the mortgagor, and "*untainted with any advantage taken by the mortgagee of the use of his incumbrance,*" equity will hold the parties to their original relation of debtor and creditor.

Dougherty *vs.* Colgan, 6 Gill & Johnson, 275.
Mills *vs.* Mills, 26 Con., 213.
Hyndman *vs.* Hyndman, 19 Vt., 9.
Villa *vs.* Rodriguez, 12 Wall., 389.
Williams *vs.* Owen, 5 My. and Cr., 303.
Russell *vs.* Southard, 12 Hd., 139.
2d White & Tudor, Leading Cases in Equity, 4th Am. Edition, pp. 1983, 1984, 1995.

In the case of Villa *vs.* Rodrigues, the Supreme Court says:

"The law upon the subject of the right to redeem where the mortgagor has conveyed to the mortgagee the equity of redemption is well settled. It is characterized by a jealous and salutary policy. Principles almost as stern are applied as those which govern where a sale by a *cestui qui trust* to his trustee is drawn in question. To give validity to such a sale by a mortgagor it must be shown that the conduct of the mortgagee was, in all things, fair and frank, and that he paid for the property what it was worth. He must hold out no delusive hopes; he must exercise no undue influence; he must take no advantage of the fears or poverty of the other party. Any indirection or obliquity of conduct is fatal to his title. Every doubt will be resolved against him. When confidential relations and the means of oppression exist, the scrutiny is severer than in cases of a different character. The form of the instruments employed is immaterial. That the mortgagor knowingly surrendered and never intended to reclaim is of no consequence. If there is vice in the transaction, the law, while it will secure to the mortgagee his debt, with interest, will compel him to give back that which he has taken with unclean hands. Public policy, sound morals, and the protection due to those whose property is involved, require that such be the law."

Judge Redfield, in his note to Hinkley *vs.* Wheelwright, American Law Register, October, 1869, says:

"And in the determination of this question, the important consideration will be the relative value of the land, and the agreed price. Where there is any considerable under-price paid, and the parties stood in equal relations, the courts uniformly interfere and declare the sale a mortgage, and redeemable upon the payment of the price and interest. *The purchaser, standing in the relation of creditor, or mortgagee, or guardian, or trustee of any kind, must see to it, if he desires to have the transaction upheld in a court of equity, that he pay the value of the property.* He is, indeed, by his very attitude and reference to the seller, in a position where the

law will presume against him. He is bound to show fairness in the sale, instead of calling upon the seller to show unfairness, in order to avoid the sale, as he must do in all other cases."

Holmes *vs.* Grant, 8 Paige, 243.

R. T. MERRICK,
T. T. CRITTENDEN,
For Appellant.

Mortgage

Supreme Court of the Dist. of Col.

JANUARY TERM, 1875.

SAMUEL A. PEUGH
vs.
HENRY S. DAVIS. } *Equity.* 1713.

OPINION.

Mr. Justice MacArthur delivered the opinion of the court:

"The first question to be determined is whether the two instruments in writing, executed and delivered by the complainant to the defendant, operate as a security for the payment of the $2,000, or as an absolute conveyance of the property. The complainant offers parol testimony for the purpose of showing that the deeds, although absolute on their face, were really intended as a security for money loaned. The rule admitting such evidence for this purpose is now well settled, and was not questioned on the hearing of this case. The evidence upon the subject consists of the pleadings, the deeds, and the testimony of one or two witnesses. The instruments are absolute on their face, and are both in the record, and are in support of the case set up by the defendant. The allegations in the bill, that they were intended only as a mortgage, are positively denied in the answer. The only witnesses, except the complainant himself, who testify to anything from which the court can infer, at the time of the second instrument, the transaction was a loan, are George Simms and Margaret, his wife, who both

state that Davis said that Peugh owed him $2,000, loaned on the squares. They are, however, contradicted by Joseph H. Hilton, who was present at the same interview, and who testifies that no such statement was made. Richard A. Hill says he knew the parties, and that in the fall of 1862, at the corner of Fourteenth Street and Pennsylvania Avenue, he heard Davis hail Peugh about a $2,000 loan, and that he said to Peugh he had promised two and a half per cent. interest per month thereon, and that if Peugh would pay that interest he would give Peugh a deed in fee. There is no other fact or circumstance in the case going to show that the last instrument was effected upon any arrangement that it could be a mortgage.

"William H. Ward, who was a witness for defendant, states that the instrument is in his handwriting, and that the parties came to his office, and that he drew said paper at their joint direction, and that the transaction was a final sale of the property; and he directly contradicts every allegation in the bill material to the plaintiff's case, and supports the defendant's answer on that subject. Mr. Ward is a conveyancer and a member of the bar, and with opportunities of knowledge, by information from both parties, as to the nature of the transaction at the time it occurred. He prepared the instrument under their immediate direction, and imbodied in it their agreement. He states that he informed them that, as a deed had already been made of the property, this would be the best way to convert what had previously been a mortgage into an absolute purchase. And he is corroborated by the receipt which Peugh then gave the defendant, expressed to be for the purchase of the squares.

"We think that against a case like this a statement which might bear a different construction, made in a conversation at a corner of a street and, perhaps, not well remembered, cannot prevail, and we are quite clearly of the opinion that it was the understanding of the parties that

the deed of February 9, 1858, should operate as an absolute sale, and that complainant's equity of redemption should thereby be extinguished.

"The complainant seeks also to invoke to his aid the principle by which courts of equity will regard any agreement between mortgagor and mortgagee for the absolute sale of the land. In *Villa* vs. *Rodriguez*, 12 Wall., 323, the Supreme Court enforced this principle in the following language:

"'The law upon the subject of the right to redeem, where the mortgagor has conveyed to the mortgagee the equity of redemption, is well settled. It is characterized by a jealous and salutary policy. Principles almost as stern are applied as those which govern where a sale by a *cestui qui trust* to his trustee is drawn in question. To give validity to such a sale by a mortgagor, it must be shown that the conduct of the mortgagee was, in all things, fair and frank, and that he paid for the property what it was worth. He must hold out no delusive hopes; he must exercise no undue influences; he must take no advantage of the fear or poverty of the other party. Any indirection or obliquity of conduct is fatal to his title. Every doubt will be resolved against him. When confidential relations and the means of oppression exist, the scrutiny is severer than in cases of a different character. The form of the instruments employed is immaterial. That the mortgagor knowingly surrendered and never intended to reclaim is of no consequence. If there is vice in the transaction, the law, while it will secure to the mortgagee his debt, with interest, will compel him to give back that which he has taken with unclean hands. Public policy, sound morals, and the protection due to those whose property is involved require that such be the law.'

"These observations were made in a case where the deed was made by nieces and nephews of the mortgagee, who was their uncle, and by their mother, who was his sister,

sideration. We apprehend it would be a dangerous precedent to hold otherwise at this late day.

"The intemperate expressions of defendant toward Peugh, preceding the execution of the bond, certainly exhibit acerbity of temper, but they do not seem to have influenced the conduct of the parties in the slightest degree.

"A majority of the court are of opinion that the decree below ought to be affirmed."

Carter, Ch. J., and Mr. Justice Wylie dissenting.

Supreme Court of the U. S.

SAMUEL A PEUGH,
Appellant,

vs.

HENRY S. DAVIS.

October Term, 1877. No. [illegible].

Brief of Appellee.

WALTER D. DAVIDGE,
for Appellee.

R. O. Polkinhorn, Printer, Washington, D. C.

Supreme Court of the U. S.

OCTOBER TERM, 1877.—No. 243.

SAMUEL A. PEUGH, *Appellant*,

vs.

HENRY S. DAVIS, *Appellee.*

BRIEF OF APPELLEE.

Statement of the Case.

This is a bill to redeem an alleged mortgage.

In March, 1857, Peugh borrowed from Davis $2,000 for sixty days, and gave as security an absolute deed for squares 910 and 911 in the City of Washington. The loan was paid at maturity, and the deed returned to Peugh.

In May, 1857, Peugh borrowed from Davis the sum of $1,500 for a like period, and gave as security the same deed. Default being make in the payment of the debt, Davis, on the 7th of September, 1857, had the deed recorded. (The deed will be found on folio 13 of Record).

On the 16th of January, 1858, Charles H. Wiltberger, claiming the squares under a tax title, brought two suits in ejectment for the recovery of the squares against Davis, in whom the title was vested according to the record.

In this state of things, another transaction took place between the parties on the 9th of February, 1858, and the character of this transaction constitutes the only ques-

tion in controvery. The bill alleges that the transaction was a mortgage, or, in other words, that notwithstanding the default of Peugh and the litigation in respect of the security, Davis advanced $500 more on the same security, thus making the whole debt $2,000. (R., folios 5 to 8.) On the contrary, the answer alleges that after Peugh had repeatedly refused to pay even the principal of the debt, which Davis was willing to accept in full satisfaction, Peugh offered to sell, in consideration of the additional $500, the equity of redemption in the property, and at the same time to warrant the title and indemnify Davis against loss in consequence of the pending litigation; that said offer was accepted by Davis, and that thereupon the parties met at the office of William H. Ward, and there under his advice and instructions carried the contract into execution. (R., folios 21, 24, &c.)

There being a deed already on record, absolute on its face, though, in fact, a mortgage, Mr. Ward, instead of drawing a new deed, adopted the course of giving complete effect to the existing one, and prepared the instrument of writing, and the receipt annexed; (set out on folios 42–45) which instrument and receipt were duly executed by Peugh. The former of these two papers adopts and confirms the deed on records as perfect and indefeasible according to the purport of its face; and covenants for the absolute title thereunder, and the indemnity of the grantee; and the latter *ipsissimis verbis* acknowledged the receipt of $2,000, "being in full for the purchase of squares Nos. 910 and 911 in the City of Washington."

The bill was filed by Peugh June 28, 1869 (R., folio 1). It is under oath, and in relation to the transaction in controversy avers in substance (folio 5) that Davis agreed to make the additional loan of $500 upon the execution of a further instrument of a similar tenor and

effect to the deed; that Davis represented that such instrument was rendered necessary by the further advance of money, and that the existing relations of mortgagor and mortgagee should continue unchanged, and such instrument should have no other operation than as security for the repayment of the two loans of $1,500 and $500, with interest. The bill then goes on to aver (folios 6 and 7) that before Peugh would consent to execute said instrument he called on William H. Ward, the defendant's conveyancer, who, *as the complainant knew*, had been in consultation with Davis on this point, and asked whether fraud on the part of said Davis could give the deed and instrument a different operation than that of a security, and that thereupon the said conveyancer replied that he understood the transaction to be a loan and security therefor, and that there was no danger in executing said instrument, and that therefore it was executed. These averments are *seriatim* and emphatically denied by the answer so far as they concern the defendant (R., folios 35, 36).

In respect of what is alleged to have passed between the complainant and Ward, the averments are denied on information and belief, and proof is called for (R., folios 37, 38).

The broad issue was thus made whether the transaction of February 9, 1858, was in fact intended to be a security for a debt instead of a sale as the papers imported on their face.

If, in fact, the transaction was intended to be a sale the bill is utterly devoid of any averment in impeachment of such sale for the want of fairness, adequacy of price or otherwise.

The bill was dismissed at Special Term, and on appeal the decree of the Court at Special Term was affirmed. (R. folios 671, &c.)

The opinion of the Court in General Term is annexed.

Points and Authorites.

I. The transaction of the 9th of February, 1858, was in fact and was designed by both parties to be a sale of the equity of redemption.

The instrument of writing and receipt executed by Peugh and prepared by Ward to carry into effect what both parties concurred in stating to be their purpose are wholly irreconcilable with the theory of a mortgage.

The recital and covenants in the former paper and the declaration of the latter that the $2,000 was paid in full for the purchase, leave no room for doubt on this subject.

In *Trull* vs. *Skinner*, 17 Pick. 213, a similar course was adopted and sanctioned by the Court.

There the mortgagee had taken and recorded an absolute deed and given a collateral instrument by way of defeasance. Subsequently the parties came to an agreement under which the mortgagee was to have the property, and the defeasance was canceled.

Chief Justice SHAW says, pp. 214, 215: "The first question is whether this last agreement, surrendering and cancelling the instrument of defeasance, was an extinguishment of the equity of redemption, as between the parties and against the creditors of the mortgagor. The Court are of opinion that where an absolute deed is given accompanied by a simultaneous instrument, operating by way of defeasance and afterwards the parties, by fair mutual stipulations, agree that the defeasance shall be surrendered and cancelled, with an intent to vest the estate unconditionally in the grantee, by force of the first deed, by such surrender and cancellation the estate becomes absolute in the mortgagee. The original conveyance stands unaffected in form and legal effect; it conveys an estate in fee; the only party who could even claim a right to deny it that operation, by engraft-

ing a condition upon it, has voluntarily surrendered the only legal evidence by which that claim could be supported, and is thereby estopped from setting it up. Such cancellation does not operate by way of transfer, nor, strictly speaking, by way of release working upon the estate, but rather as an estopped arising from the voluntary surrender of the legal evidence, by which alone the claim could be supported; like the cancellation of an unregistered deed, and a conveyance by the first grantor to a third person without notice. The cancellation reconveys no interest to the grantor and yet taken together such cancellation and conveyance to a third person make a good title to the latter by operation of law."

The averments of the bill setting up mortgage (R., folios 5, 6, 7,) are directly contradicted by the answer (R., folios 35, 36).

The answer is supported by—

Deposition of William H. Ward, R., folios 371 to 395.

Deposition of Francis Mohun, " " 395, &c.
" " Defendant, R., folios 404 to 412.
" " " cross-ex., R., folios 473, 474.

The averments in the bill as to what passed between the complainant and Ward (R. folios 6, 7,) are put in issue by the answer (R., folios 37, 38,) and contradicted by Ward.

Deposition of Ward, R. folios 378 to 381.

The complainant was examined as a witness October 8, 1869 (R. folio 50), and again called June 11, 1873. (R. folio 328.) He well knew the importance of maintaining the averments of his bill. The answer of the defendant had been filed August 14, 1869, and with it a copy of the instrument and annexed receipt drawn by Mr. Ward.

A comparison of the testimony of the complainant relating to the character of the transaction (R. folios 57 and 58) with the sworn averments in the bill will show that the complainant was not prepared to reiterate those averments under oath. His explanation of executing the instrument is singularly lame, and besides is with the other material parts of his evidence contradicted by the defendant (R. folios 422 to 429). As to the receipt in full for purchase money he has nothing to say, and is equally silent as to what passed between him and Ward, although put in issue and although he swore in his bill that he *knew* that Ward, the defendant's conveyancer, had been in consultation with him, the defendant, as to the character of the transaction, and that he, the complainant, in consequence of the representations of Ward, had executed the instrument.

The evidence as to the nature of the transaction afforded by the answer the documents themselves and the depositions in behalf of the defendant cannot be regarded as in any degree impaired by what the complainant has stated. What further have we? A witness named Hill, examined September 24, 1872 (folio 159), testifies that ten years before, in the fall of 1862, he and Peugh were at a street corner when Davis came up and "hailed" Peugh about $2,000, and then witness went off. Davis said, "I want that $2,000." "I shall charge you two-and-a-half per cent. a month for it, and if you pay that I will give you a deed," (folio 161.) When asked on cross-examination how he recollected the conversation, he answered (folio 171), "Well, as I stated before, the matter has been talked over once or twice, and, of course, it has been refreshing to my memory."

George Simms was examined September 27, 1872, and testified that Davis said at the house of witness in 1865, seven years before, that Peugh owed him $2,000,

loaned on the two squares (folio 179), a nd Margaret Simms, the wife of George, examined at the same time, testified to the same effect (folio 184), but on cross-examination said she was not listening to the particulars of the conversation (folio 178.)

The incredibility of the evidence of these last two witnesses is placed beyond question when it is stated that the defendant, when the conversation took place, had gone to their house to compel them to leave one of the squares for the very reason that he was owner and not mortgagee, unless they would recognize him as owner. Besides, these witnesses are positively contradicted by John H. Hilton, (folio 551) and also by the defendant, (folio 655.)

The above is all the evidence adduced by the complainant, and it requires no comment. If it were not wholly worthless, when met by the overwhelming proof of the defendant, it would be disposed of by the consideration that parol evidence cannot be received to control or vary the plain import of the instrument and receipt, unless it goes to the length of showing a state of things from which a court of equity will imply the existence of an equity of redemption.

Russell vs. *Southard*, 12 How., 139;
2 Leading Cases, Eq. 3d Am. Ed., p. 629, &c.

A number of witnesses were examined to show the cultivation of the squares by Peugh after February, 1858, and until 1861, when the fencing was destroyed by the soldiers in 1861.

It will be recollected, however, that the streets around these squares had not even been opened. It was a matter of no concern to Davis that they were cultivated, and his evidence shows that the cultivation took place by his authority.

(See his deposition, folios 412, 413.)

So, too, as to act of ownership pretended by the

complainant to have been exercised in a general way without saying what such acts were (folio 62, &c.); the defendant in his evidence denies that any such acts, except cultivation by his permission were exercised with his knowledge or acquiescence. (folios 415, 428.)

When, in 1865, after the property had risen in value the complainant clandestinely put a tenant in possession of one of the squares, the defendant at once resisted the invasion of his rights. (Answer, folio 32.) Deposition of defendant (folio 415); deposition of John H. Hilton (folio 188).

Certainly the duties of ownership were not borne by the complainant. He does not pretend to have paid the taxes at any time, and it is shown that they were paid by the defendant (folio 428).

In short, the mortgage now pretended was a very satisfactory sale so far as the disadvantages of ownership were concerned, and it was only after the rise in property in value in consequence of the suppression of the rebellion that we find the complainant asserting that he was owner In the beginning of the war, and for some time afterwards, the property was utterly valueless. In 1865, property was bringing higher prices than ever before, and then for the first time we find the complainant endeavoring to repudiate his sale, not openly, but by covert machinations, as is shown in secretly putting a tenant in possession as above mentioned, and subsequently in respect of the Cole suit (answer, folio 29–34); deposition of defendant (folio 418, &c).

II. That Davis was under no disability to purchase because he stood in the relation of mortgagee to mortgagor.

In *Russell* vs. *Southard*, 12 How., 139, 154, this Court says:

"We think that inasmuch as the mortgagee in possession may exercise an undue influence over the mortgagor, especially if the latter be in needy circumstances, the purchase by the former of the equity of redemption is to be carefully scrutinized, when fraud is charged; and that only constructive fraud, or an unconscientious advantage, which ought not to be retained, need be shown to avoid such a purchase. But we are unwilling to lay down a rule which would be likely to prevent any prudent mortgage in possession, however fair his intentions may be, from purchasing the property, by making the validity of the purchase depend on his ability afterwards to show that he paid for the property, all that any one would have been willing to give. We do not deem it for the benefit of mortgagors that such a rule should exist."

And see—

Villa vs. *Rodrigues*, 12 Wall., 323;
3 Sugden, W. & P., (10th Ed.) 227-8;
Knight vs. *Majoribanks*, 2 Mac. & G., 10;
Webb vs. *York*, 2 Sch. & L., 661;
Conway's Ex. vs. *Alexander*, 7 Cranch., 218;
Hicks vs. *Hicks*, 5 Gill & Johnson, 85;
Trall vs. *Skinner*, 17 Pick., 213;
Wynkoop vs. *Cavring, et al.*, 21 Ills., 570.

The rule is that such transactions will not be set aside except for manifest unfairness or gross inadequacy of price. In the present case the bill does not aver either.

The necessitous circumstances of the complainant are intimated rather than alleged by the bill and are denied by the answer (folio 23), and the complainant, though a witness, does not even testify to them.

As neither unfairness nor inadequacy of price is alleged, so neither is proved.

There is no evidence tending in the remotest manner

to show that defendant used his incumbrance to obtain any advantage.

In respect of inadequacy of consideration, attempted to be shown in evidence it will be borne in mind—

1st. That the squares in controversy were sold in the crisis of 1857. For the effect of this see:

Depositions of Coombs, Parker, Kirk and Brown, folios 540, 573, 592 and 642.

2d. That actions of ejectment were pending when the sale took place.

3d. That the character of the property was such that it could not have other than a mere speculative value.

These general observations suffice to dispose of the subject.

It may be added, however, in relation to the specific evidence relied on, that when the complainant bought from Bayliss in 1855, he borrowed at the same time $2,000, and gave a deed of trust for the whole debt but on *different property* (deposition of Bayliss, folio 121, &c.); that Callan is shown on cross-examination to be unworthy of credit (folios 138, 145, &c.); that Kelly is forced to admit that the pendency of a suit would have rendered the property unsalable (folio 206); that Todd was firm in the belief that the panic of '57 did not seriously affect real estate in this city (folio 310, &c.); that in 1854 Todd bought these squares with other real estate from the Young heirs for $850, in consequence of an outstanding tax title in the Vanhess heirs (see depositions of Bayliss, Todd, and Brent, and the deed of conveyance); and that Joachim bought from Georgetown College in 1851, for three mills per foot, the property, small parcels whereof he peddled off to Dreier and Myers, witnesses for the complainant (folios 109, 210, 228).

Peugh, while testifying on other subjects, is absolute-

ly silent on that of value. As to inadequacy of price without any circumstances of misconduct.

8 Sugden, 227–8, (10th Ed.)

III. The finding of the court below in respect of matter of fact, will not be disturbed unless the error be plain and manifest.

IV. Lapse of time and no explanation of the delay.

Marsh vs. *Whitmore*, 21 Wall., 178;

Badger vs. *Badger*, 2 Wall., 95.

W. D. DAVIDGE,

Solicitor for Appellee.

And no reason is apparent, Cooper [illegible] to the suit for the purpose of removing the cloud, why the bill should not go on to pray the relief against him to which the complainants were entitled, the cloud being removed. It is "the constant aim of a court of equity to do complete justice by embracing the whole subject, deciding upon and settling the rights of all persons interested in the subject of a suit; to make the performance of the order perfectly safe to those who obey it, and to prevent future litigation."

Caldwell vs. Taggart, 4 Pet., 282.

Defendant Cooper, being already a party, and a proper party, for the purpose of removing the cloud; if the defendant Reynolds conceived that the prayer for a foreclosure was improper, he should have demurred to that prayer only, and not to the whole bill.

J. M. THORNBURGH,
For Complainants.